

## TERMS AND CONDITIONS

### 1. General

- 1.1. You may access and use this Website on the Conditions set out below and on the Website for Your private, non-commercial purposes.
- 1.2. These Terms and Conditions together with our Trading Terms and Conditions <<http://akersoflawn.com.au/assets/trading-terms-final.pdf>>, Terms and Conditions for Special Offers <<http://akersoflawn.com.au/terms-and-conditions.html>>, and your Order constitute the entire Contract between us and you for the supply of Products. The Contract cannot be varied unless we agree to vary it in writing or by email.

### 2. Interpretation

- 2.1. In these Conditions, unless the context required otherwise, the following terms shall have the following meanings:-
  - 2.1.1. "Conditions" means the terms and conditions contained in this document;
  - 2.1.2. "Goods" mean the products and/or materials provided by Us;
  - 2.1.3. "Order" means the placement of an order for Goods made through the Website by the placement of goods into an electronic shopping cart;
  - 2.1.4. "Price" means the amount shown as the purchase price for Goods or Services on the Website;
  - 2.1.5. "Quote" means a request for Goods or Services to Us made through the Website;
  - 2.1.6. "Services" mean the delivery and/or supply of Goods, installation and/or repairs done by Us, including any advice or recommendations;
  - 2.1.7. "Us", "We", "Our" means D & J Akers Pty Ltd T/A Akers of Lawn ABN 32 008 107 113 of 1/1 Aldershot Road, Lonsdale SA 5160 Australia, and Our officers, employees, contractors and agents;
  - 2.1.8. "You", "Your" or any grammatical derivation of this means you the customer;
  - 2.1.9. "User" means the creator of the user name and password provided to create a login account on Our website;
  - 2.1.10. "Website" means the website [www.akersoflawn.com.au](http://www.akersoflawn.com.au) and any other website owned and managed by Us, but not including any third party websites;
- 2.2. These Conditions are governed by the law of South Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.
- 2.3. In the interpretation of these Conditions:
  - 2.3.1. References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
  - 2.3.2. Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;

- 2.3.3. Grammatical forms of defined words or phrases have corresponding meanings;
- 2.3.4. Parties must perform their obligations on the dates and times fixed by reference to South Australia;
- 2.3.5. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- 2.3.6. If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- 2.3.7. References to a party are intended to bind their executors, administrators and permitted transferees;
- 2.3.8. Obligations under these Conditions affecting more than one party bind them jointly and each of them severally.

### **3. Quote for Goods or Services**

- 3.1. You may request a Quote or place an Order through our Website.
- 3.2. Any Quotes provided as a result of a request made through the Website will be on the terms and conditions of the written Quote provided to You. The written quote may be provided to you electronically.
- 3.3. If you accept Our Quote, an Order will be created.
- 3.4. All Orders will be governed by the Trading Terms and Conditions on the Website as at the date that Your Order is placed.

### **4. Payment**

- 4.1. Our Website does not have an electronic payment facility. All payments for Goods and Services will be on the terms of the Trading Terms and Conditions on the Website as at the date that Your Order is placed.

### **5. Availability of service**

- 5.1. We do not guarantee that this Website will be accessible by You at all times as We rely on communications links and networks over which We have no control. However, We will use Our best endeavours to have the Website network running continuously.
- 5.2. We do not warrant that Your access will be uninterrupted, timely, secure or error free.
- 5.3. Access to the Website may be suspended either with or without notice should We need to maintain or repair the website or there is a system failure.
- 5.4. We have the right to change or discontinue the Website, the documents on it and any price, service or feature found on it at any time.

## **6. Accuracy of Information**

6.1. As a User, You must choose a secure password and not disclose it to anybody. You will indemnify Us for any claim, expense, loss or damage that We suffer as a result of unauthorised access to the Website using Your login details.

## **7. Privacy**

7.1. You consent to Us contacting You through the Website.

7.2. By requesting a Quote or placing your Order, you agree that we may store, process and use data including personal and confidential information collected from You for the purposes of preparing your Quote of processing and delivering your Order.

7.3. We will use your personal information such as your name, phone number, address, and email address to enable us to send information or process additional information at other times, including but not limited to, when you provide feedback, change your content or email preferences, respond to a survey, or communicate with Us for support/queries.

7.4. You also agree that we may use such data, other than credit card details, in order to provide you with information from time to time on our other products that may be of interest to you. If you do not agree to our using such data in order to provide you with information on our other products, you should indicate your non-agreement to Us by email or phone.

7.5. You may obtain a copy of the data held by us concerning you on request in writing. We reserve the right to charge an administration fee for processing such request. If any data held by us concerning you is incorrect, we will correct it on your written request.

7.6. We and you, including employees and contractors, agree not to disclose confidential information to additional third parties; to use all reasonable endeavours to protect confidential information from any unauthorised disclosure; and only to use your confidential information for the purpose for which it was disclosed by you and not for any other purpose.

7.7. These obligations do not apply to confidential information that:-

7.7.1. is authorised to be disclosed;

7.7.2. is in the public domain and/or is no longer confidential, except as a result of breach of these Terms and Conditions;

7.7.3. is received from a third party, except where there has been a breach of confidence; or

7.7.4. must be disclosed by law or by a regulatory authority including under subpoena.

7.8. The obligations under this clause will survive termination of your account.

7.9. We will use your personal information if required to do so by law. If we sell the business, disclosure of your personal information may be necessary in the negotiation stage. In that

case, we will ensure that there is a non-disclosure agreement in place to protect your information.

- 7.10. We do not and will not sell or deal in personal or customer information. We will never disclose your personal details to a third party except the necessary information required by providers of products or services you have purchased or to protect the rights, property or safety of the Website or Software, our customers or third parties or if required by law.
- 7.11. We may however use in a general sense without any reference to your name, your information to create marketing statistics, identify user demands and to assist it in meeting customer needs generally. In addition, we may use the information that you provide to improve our website and services but not for any other use.
- 7.12. The Website is for Your Private Use only. You must not use it for any commercial purpose including on-selling, licensing or otherwise deal with the Website or your login details.
- 7.13. You must not use the Website:-
- 7.13.1. For any unlawful purpose
  - 7.13.2. To undertake any activity that would breach the Privacy Act 1988 (Cth) even if that Act does not apply to You;
  - 7.13.3. To undertake any activity that would breach the Spam Act 2003 (Cth);
  - 7.13.4. To impersonate any person or entity;
  - 7.13.5. To solicit any money, personal information, passwords;
  - 7.13.6. To cause offence or harm any person or to harass or bully any person;
  - 7.13.7. To defame a person;
  - 7.13.8. To conduct surveys, contests, pyramid schemes or chain letters on the Site;
  - 7.13.9. To introduce any form of malicious software into the Site or Services; or 7.13.10. To collect information about others on the Site without their consent.
- 7.14. You must not allow other people to use the Website through Your login.
- 7.15. We use reasonable measures to safeguard the personal information we hold about you from loss, theft and unauthorised use, disclosure or modification, including taking reasonable steps to prevent unauthorised access to our online and computerised systems by the use of measures such as firewalls, data encryption, virus detection methods, and password restricted access.

## **8. Intellectual Property**

- 8.1. We own all present and future rights to intellectual property in our products (developed in whole or in part by Us), our branding on the Website and all the documents on it, including inventions and improvements, trade marks (whether registered or common law trademarks), patents, designs (including the design of the website), copyright, and any corresponding property rights.
- 8.2. We may have used open source software on the Website. To the extent that the terms of the open source software license expressly overrides these terms, those terms will apply.

## **9. Third Party Websites**

- 9.1. The Website may contain links to third party websites. These websites do not form part of the Website and You acknowledge that We have no control over or responsibility for those websites.
- 9.2. When You leave the Website, to link to a third party website You do so entirely at Your own risk. We disclaim all responsibility for the accuracy or reliability of the website or the services or information that may be contained on that third party website. We will not be liable to You for any direct or indirect loss or damage that You may suffer as a result of accessing or relying on such third party websites.
- 9.3. Display advertising on the Website whether or not such advertising contains a link to a third party website does not mean that We endorse or recommend the service or product being advertised.

## **10. Restricting Access**

- 10.1. We reserve the right to restrict or terminate your access to the Website and any of our services at any time without notice.

## **11. Cancellation by Us**

- 11.1. If We believe that you are acting contrary to the spirit of the Website, or are using the Website or documents on it other than for your Private Use such as for commercial gain or in a manner which could damage our business or reputation, we reserve the right to cancel Your access.

## **12. Liability**

- 12.1. To the extent permitted by law, We exclude all express or implied representations, conditions, warranties and terms relating to the Website except to the extent set out in these Conditions.
- 12.2. We will not be liable to You or anyone else for any claim, expense, loss or damage You may suffer or incur at all as a consequence of using the Website or any third party website including for any that claim, expense, loss or damage is direct, indirect, consequential or incidental.
- 12.3. To the extent We are not able to exclude Our liability, Our total liability to You for any loss or damage You may suffer or incur will be limited to the re-supply of the goods and services to You or at Our option to Us refunding the amount You have paid Us for the goods and services in the previous 12 month period.

### **13. Consumer Guarantees**

13.1. Consumer guarantees apply under the Australian Consumer Law. Nothing in these Conditions excludes the application of those guarantees.

13.2. Your Consumer rights are set out in the Trading Terms and Conditions contained on the Website.

### **14. Force Majeure**

14.1. To the extent permitted by law, We are not liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of Us, and We shall be entitled to a reasonable extension of time for the performance of such obligations.

### **15. Miscellaneous**

15.1. You indemnify Us against any claim, expense, loss or damage whatever incurred by Us directly or indirectly, as a result of a breach by You, or other person or corporation using or relying on the Website if Your login has been used.

15.2. You cannot assign Your rights and obligations under these Conditions.

15.3. You warrant that You have relied entirely Your own enquiries in using to the Website and no oral or written communication by Us.

15.4. Any provision of these Conditions which is unlawful and unenforceable will be severed and the remainder of the provisions will remain in force.

15.5. Any notice or other communication to You or Us must be in writing and delivered by email to the email address last notified and that email it will be treated as received the business day after it enters the recipient's information system.

15.6. You acknowledge that We may use these Conditions on our website and that We may provide notice to You of any amendments. In this event, the Conditions on Our website shall apply to any future dealings as between You and Us, and You are deemed to have notice of any such Terms and Conditions and/or amendments.

15.7. Your acceptance of the varied Conditions will be indicated by Your continued use of the Website.