

TERMS OF TRADE

1. What is the purpose of this agreement?

- 1.1 This agreement sets out the terms that apply to the relationship between you and your agent(s) and/or principal(s) ("you" and "your") and **KP Group Limited** and our agent(s) ("we", "us" and "our").
- 1.2 This agreement will bind you and your principal(s) and agent(s). In entering into this agreement as an agent (e.g. builder) you declare that you are authorised to:
- act for the owner of the property subject to our products and services; and
 - enter into this agreement and contract for our products and services on the owner(s)' behalf.

2. What information about you can we collect?

- 2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement and the provision of our products and performance of our services.
- 2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:
- to give effect to the provision of our products and performance of our services;
 - to enforce our obligations under this agreement or any additional agreement;
 - when authorised by you or required by law;
 - to assess credit worthiness; and
 - to market any of our products and services.
- 2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access your information and ask us to correct any mistakes.

3. What are our products and services?

- 3.1 "Product(s)" and "service(s)" means and includes without limitation:
- machines, equipment, parts, units, components, fixtures, fittings, accessories, cleaning products and chemicals, materials and inventory supplied by us (whether separate, attached to something or the subject of our services);
 - cleaning, sweeping, scrubbing, steam and water blasting, vacuuming, building washing, lawns, gardens, line marking, concrete coatings and applications, manufacture, hire, repairs, sales and delivery; and
 - agency fees, charges and out of pocket expenses incurred by us, identifiable in any document or electronic record issued by either party (all of which are deemed to be incorporated into and form part of this agreement) or as ours by marking or manner of storage.

4. What is the price?

- 4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses. If no price is stated, the price will be our standard amount at the time of your request. The price is subject to reasonable change due to variations to the products and services or circumstances beyond our control.

5. What if we give you a quote?

- 5.1 The quote will be valid for thirty (30) days and exclusive of GST, unless stated otherwise.
- 5.2 The quote will be subject to these terms and any additional terms stated on the quote.
- 5.3 You will be responsible for increased costs resulting from any subsequent changes to a quote due to any inadequate or inaccurate information, request/requirement for additional products and services or variations.
- 5.4 You can only accept quotes in writing and we may withdraw a quote at any time prior to your acceptance.
- 5.5 We may alter the quote due to circumstances beyond our control or clerical or computer error.

6. When and how do you pay us?

- 6.1 You agree to pay us in full and without any set-off, deduction, counterclaim or retention as follows (time being of the essence):
- for credit account holders - on or before the 20th day of the month following the date of our invoice, unless required or agreed otherwise;
 - for those without credit accounts – on or before the 7th day following the date of our invoice, unless required otherwise;
 - storage fees, which may be charged for any product stored by us after the agreed date of delivery/pick up;
 - interest on any unpaid amounts at the rate of 2.5% per month/part month;
 - expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR registration, debt collection and legal fees; and
 - a deposit as required.
- 6.2 You agree to us allocating or reallocating any payment received from you towards any invoice and/or any amount owing as we determine. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.
- 6.3 We may require progress payments and invoice by payment claims under the Construction Contracts Act 2002.

- 6.4 If you have given a credit card, we may require a retention equal to the value of the products and services and deduct the same from your credit card. Each credit card payment will incur a surcharge of 3% of the value of the payment.

- 6.5 You will be responsible for payment if a third party that you expect to pay you or us fails to pay.

7. What warranties and limitations apply?

- 7.1 Manufacturers' and third party warranties (where applicable) and any written warranty given by us. We guarantee our labour and workmanship for six (6) months from the date the services are provided.
- 7.2 If you are in trade and/or are a business, you agree that the parties contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 and the Contract and Commercial Law Act 2017 to the extent permissible by law.
- 7.3 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control, such as supplier and importation delays.
- 7.4 Samples shown to you may differ from products provided to you.
- 7.5 In no event shall we be liable to you or any other party for any special, consequential, indirect loss or damage, or loss of profits, arising out of or in connection with goods or services provided (or to be provided) to you.
- 7.6 Subject to applicable insurance and 7.1-7.5, if we are deemed liable for loss or damage of any kind, however arising including from provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort (including negligence) or otherwise, our total liability is limited to the price paid (or payable) by you for the products and services provided to you for which the liability arises.

8. What if you wish to make a claim in relation to our products and services?

- 8.1 Indent, special order and custom made products cannot be returned unless due to fault/defect.
- 8.2 Subject to clause 8.1, claims relating to our products and services are subject to the following:
- for claims relating to faulty/defective products and services, you notifying us within the applicable warranty period;
 - for claims not relating to faulty/defective products such as short or incorrect supply, you notifying us within seventy-two (72) hours of pick up/delivery;
 - the products having been used in accordance with the manufacturer's/our instructions and not having been subject to abuse, neglect, lack of maintenance, misuse, accident or modification or work by a unauthorised third party; and
 - us repairing or replacing faulty/defective products or performing further services at our discretion.
- 8.3 Any products the subject of a claim under 8.2 cannot be destroyed or removed from the premises until we have inspected the same or waived our right to do so in writing.

9. When will the products and services be provided?

- 9.1 We will use our best endeavours to deliver the products and services at the time agreed between you and us; however, the time of delivery is not an essential term of this agreement and if you fail to accept delivery then the products will be deemed to be delivered at the agreed time. We may partially deliver products listed in one order and if we fail to deliver an instalment that failure will not give rise to a right of cancellation.
- 9.2 Delivery is complete when we give the products to you, give the products to a third party carrier, or leave the products at the delivery site or your premises.
- 9.3 We are responsible and assume risk for the products until delivery in accordance with 9.2, pick up by you or the passing of ownership under 12.1, whichever comes first. The responsibility for insurance will pass upon delivery or transfer of risk in accordance with this clause.

10. For what are you responsible?

- 10.1 You are responsible for and warrant that all:
- sites subject to our products and services comply with all relevant health and safety requirements and have a suitable and proper means of access;
 - necessary scaffolding is supplied and erected as appropriate at your expense when required to ensure efficient progress with the work;
 - necessary resource consents from relevant local authorities have been obtained and you have informed us of any relevant information contained within the same;
 - you have provided and will continue to provide us with all information and assistance required to enable us to carry out our obligations under this agreement; and
 - utility services, underground services, cables, mains, pipes, lines, drains and inputs, either on or adjacent to the land on which the works are to be carried out, are identified, marked, easily visible and we are advised of the same.
- 10.2 If you do not meet your obligations under 10.1 adequately, any and all loss, damage and/or costs will be your sole responsibility.

11. What if you hire any products from us?

- 11.1 The rate to hire products will be agreed between you and us from time to time subject to GST and out of pocket expenses. If no rate is stated, the rate will be our standard amount at the time of your request. The rate is subject to reasonable change due to circumstances beyond our control.
- 11.2 The hire period for the products shall start when the products are delivered in accordance with 9.2 and shall continue until we have receipted the products into our possession. You will be liable for the cost of returning the products.

- 11.3 During the hire period you will at your expense:
- keep the products in proper working order and maintain the products in good working, provided that you seek our written consent to all repair work and for such purposes we shall be entitled to possession of the products;
 - take proper care of and use the products including in accordance with any manufacturer's/our specifications and instructions;
 - be liable for the products until they are receipted by us and any remedial and/or replacement costs will be your responsibility;
 - protect the products from loss or damage (except fair wear and tear), abuse and misuse, and will immediately advise us of any damage to the products. You will be liable for any damage to or loss of the products however caused and in the event of any products being damaged or lost you will pay to us the cost of repair or replacement, whichever is required;
 - immediately fully insure the products against loss or damage by accident, fire, theft and burglary and all other usual risks and will effect adequate public liability insurance covering any loss, damage, or injury to property arising out of the operation of the products. Further, you will not use the products or permit the same to be used in such a manner that the insurer will decline any claim or reduce its cover.
- 11.4 You will only use our products or products authorised by us in relation to the hired products and not use any of our products for any other purpose.
- 11.5 You will not alter, interfere with or modify the products and will ensure that the products are used in a proper manner and will follow our directions as given.
- 11.6 You must not deal with the products in any way that is considered detrimental to us. You must not part with possession of or remove the products or any part of the same from the site where they are to be held without our previous written consent. You must not part with possession of the site without giving us at least seven (7) days' written notice of your intention to do so.
- 11.7 You must not tamper with or alter any attachments including safety notices.
- 11.8 You irrevocably authorise us or our agent at all reasonable times to periodically enter the site to inspect, repair, maintain and test the products.
- 11.9 We hold a security interest over any products that you hire for a term longer than one year.
- 11.10 You must comply with all relevant health and safety regulations, requirements and law.
- 12. What ownership and security rights do we have?**
- 12.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you. While we retain ownership, you will store all products in such a way that our interests are protected and they can be identified as provided by us.
- 12.2 You agree that we hold security interest in all of your present and after acquired property connected with products and services provided to you, and:
- authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
 - will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
 - waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
 - that both parties contract out of s 114(1)(a), 133 and 134 of the PPSA;
 - waive your rights as listed under s 107(2) of the PPSA; and
 - give us seven (7) days prior written notice of any proposed change in your name or details such as contact information.
- 12.3 You agree that your failure to pay for the products and services by the due date may give rise to a legal or equitable estate or interest in your land on which the products and services were carried out and affixed and that the interest entitles us to register a caveat against your land.
- 12.4 Where applicable, we own all existing and new intellectual property rights connected to the products and services.
- 13. What if you want to vary the products and services to be provided?**
- 13.1 All requests and orders are subject to these terms and conditions and no products or services may be varied unless both parties agree to the variation in writing prior to our commencement of our services. If we have reasonably relied on your original instructions then you will be responsible for payment of the original price of the products and services.
- 14. When can a party cancel this agreement?**
- 14.1 Subject to 14.2-14.6, either party may cancel this agreement at any time by giving fourteen (14) days prior written notice.
- 14.2 We have the right by seven (7) days prior written notice to suspend or cancel wholly or in part this or any agreement for the provision of products and services and/or close your credit account, if you default by:
- failing to pay, or indicating you will not pay, any sum owing in full by the due date;
 - any of your creditors seizing or indicating they will seize any products provided to you;
 - products in your possession becoming materially damaged while any amount remains unpaid;
 - being bankrupted, insolvent, under statutory management or put into liquidation;
 - a receiver being appointed over or a landlord possessing any of your assets;
 - a court judgment entered against you remaining unsatisfied for seven (7) days;
 - breaching the terms of this agreement; and
 - an adverse material change in your financial position.
- 14.3 If you default we may exercise a lien against any products in our possession.
- 14.4 You agree that if you default and the default is not remedied within seven (7) days, we may enter any premises occupied by you to inspect or repossess any products. You will provide reasonable access to such premises and do all things necessary to give effect to our obligations. We may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.
- 14.5 If you cancel any agreement with us for goods and/or services which is for a fixed period of time then you must pay us a sum as liquidated damages for the cancelled period of the agreement. The sum of liquidated damages will be recorded in the agreement for services between us and you agree that the amount is a genuine pre-estimate of our loss.
- 14.6 Cancellation under 14.1 or cancellation or suspension under 14.2 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement any amount owed by you for products and services provided up to and including the date of cancellation will become immediately payable and current orders and services will terminate.
- 15. Does a personal guarantee apply?**
- 15.1 If you are a director of a company or the trustee of a trust in exchange for us agreeing to supply products and services and/or grant credit to the company or the trust, you also sign this agreement in your personal capacity (jointly and severally) and unconditionally and irrevocably personally undertake as a principal debtor to pay everything that the company or trust owes us and to indemnify us against non-payment and/or default.
- 15.2 Any personal liability of you as a guarantor under clause 15.1 will not exclude the company or trust from the liabilities and obligations contained in this agreement. You will be a principal debtor and not a mere surety. You will not be released from liability under this clause by the granting of time or indulgence, any amendment to these terms or any other security interest, or any matter whatsoever (including but not limited to cancellation of any agreement or arrangement with us).
- 15.3 The terms and rights and obligations under 15.1 and 15.2 will continue to apply notwithstanding changes to these terms of trade in accordance with 16.9 and/or prior dealings.
- 16. What else is agreed?**
- 16.1 We may outsource (contract out) part of the work required to perform our services, you agree to pay for all amounts due in connection with the same.
- 16.2 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.
- 16.3 Neither party may assign or transfer their rights or obligations under this agreement to any other party without our prior written consent.
- 16.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.
- 16.5 This agreement supersedes all prior agreements, representations and warranties. This agreement also takes precedence over any other document including (but not limited to) your terms and conditions, a purchase order or a Any instructions we receive from you and all arrangements between the parties are subject to these terms.
- 16.6 A party must notify the other in writing within seven (7) days of a dispute arising. The parties will endeavour to resolve the dispute by negotiation within seven (7) days of receiving notice. If the parties cannot resolve the dispute then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996. The presence of a dispute will not affect either party's claim for any amount due, damages for any breach of obligations under this agreement and any other legal rights either party may have.
- 16.7 Documentation related to this agreement may be served on you by email. Any email sent to your correct email address will be deemed received by you when we send it.
- 16.8 Neither party will be liable for any act, omission or failure by that party under this agreement if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of that party (force majeure event), provided that whenever that party becomes aware that such a result has occurred or is likely to occur, that party will notify the other party in writing. Should such an event occur, each party will continue to use its best endeavours to perform its obligations as required under this agreement and take all reasonable steps to abate the event. Performance of any obligation affected by an event shall be resumed as soon as reasonably possible after the termination or abatement of the event. You cannot rely on or use this clause to delay any payment to us – that will not be a force majeure event.
- 16.9 We will notify you of any changes to these terms and publish the same on our website - continued provision of products and services will be subject to your signed or written acceptance of the same. All other variations must be mutually agreed in writing.
- 16.10 Any references to legislation also includes any modifying or replacement legislation.