



# Terms & Conditions of Contract – Supply & Installation

## 1. Definitions

**Agreement** means the agreement to supply the Deliverables which is composed of:

- (a) the Order;
- (b) these General Conditions; and
- (c) any attachments, schedules or annexures to the above.

**Business Day** has the meaning set out in the Security of Payment Act.

**Client** means the client stated in the Order.

**Completion** is when the Deliverables have been supplied substantially in accordance with the Agreement.

**Completion Date** means the date for the supply of the Deliverables stated in the Order or, if not stated, the date which is a reasonable period of time after acceptance of the Order by the Client.

**Custom Deliverables** means Deliverables which:

- (a) have been customised to the Client's specifications in accordance with any quotation from the Supplier and corresponding Order;
- (b) are specially ordered by the Supplier; or
- (c) are not normally stocked by the Supplier.

**Defect** means a failure of a Deliverable to comply with the Agreement.

**Defects Liability Period** means the period of 12 weeks after Completion.

**Deliverables** means Goods and/or Services (as relevant).

**Free Issue Materials** means any materials provided by the Client to the Supplier to be used in relation to the supply of the Deliverables.

**General Conditions** means this document.

**Force Majeure Event** means any of the following events:

- (a) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of a relevant authority;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (c) epidemic, pandemic or quarantine declared by a relevant authority;
- (d) natural disasters such as lightning, earthquake, flood, cyclone, volcanic eruption, landslide or mudslide;
- (e) supply chain delay or disruption;
- (f) industrial actions;
- (g) change in law (including authorisations and permits);
- (h) fire or explosion; or
- (i) any other event, matter or circumstance beyond the Supplier's reasonable control.

**Goods** means the goods and materials to be supplied by the Supplier as stated in the Order.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Insolvency Event** means:

- (a) the board of the party passes a resolution under section 436A of the *Corporations Act 2001* (Cth);
- (b) a party is placed into administration pursuant to Part 5.3A of the *Corporations Act 2001* (Cth);
- (c) a deed of arrangement is entered into in respect of a party;
- (d) a party resolves that it be wound up voluntarily;
- (e) a winding up order is made in respect of a party;
- (f) a receiver or receiver and manager, provisional liquidator, liquidator, or controller is appointed to a party;
- (g) a court orders that there be a meeting of creditors or members of a party for any purpose related to Part 5.1 of the *Corporations Act 2001* (Cth);
- (h) a mortgagee takes possession of any assets of a party; or
- (i) a party becomes, states in writing that it is, or is deemed under any law to be, insolvent or unable to pay its debts as and when they fall due,

and any other similar or analogous event to the above.

**Order** means an order issued by the Client to the Supplier for the Deliverables on the terms stated in the latest quotation issued by the Supplier to the Client for these Deliverables.

**Price** means the price for the Deliverables stated in the Order.

**Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW) as amended, replaced or updated from time to time.

**Services** means the services to be supplied by the Supplier as stated in the Order.

**Site** means the site stated in the Order or otherwise agreed at which the Deliverables are to be supplied.

**Supplier** means Sam the Paving Man Pty. Limited (ACN 050 612 194) of 61–65 Roberts Road, Greenacre NSW 2190.

## 2. Agreement

- (a) The Order is an offer from the Supplier to the Client for the supply of the Deliverables in accordance with the Agreement.
- (b) By accepting or otherwise proceeding in accordance with an Order within any validity period specified in the quotation provided by the Supplier, the Client is deemed to have accepted the terms of the Agreement.
- (c) The Agreement takes precedence over any of the Client's terms and conditions.

## 3. Warranty

The Supplier warrants that the Deliverables will:

- (a) be of reasonable quality;
  - (b) new unless stated otherwise;
  - (c) be supplied to specifications stated in the Agreement;
  - (d) comply with law; and
  - (e) correspond with any descriptions, samples or specifications stated in the Agreement,
- and further that the Services will be supplied with reasonable care and skill.

## 4. Design and Purpose

- (a) Unless otherwise expressly stated in the Order:
  - (i) the Supplier does not warrant that the Deliverables are suitable or fit for any purpose; and
  - (ii) the Deliverables do not require the Supplier to perform any design works,and it is the Client's responsibility to ensure the Deliverables are suitable and sufficient for their intended use.
- (b) The Client agrees that:
  - (i) it knows the way it intends to use the Deliverables;
  - (ii) it knows the purpose for which it intends to use the Deliverables;
  - (iii) it is satisfied, based on:
    - (A) the written specifications for the Deliverables; and/or
    - (B) the Client's own enquiries, including any inspection conducted by the Client prior to placing an Order, that the Deliverables will be fit for the purpose the Deliverables are intended for;
  - (iv) the Client has brought to the Supplier's attention any special characteristics or properties the Deliverables must have before the Deliverables were tested and ordered; and
  - (v) where the Deliverables are installed, sealed or cleaned other than by the Supplier, the Supplier is not responsible for any issues arising from this work completed by a party other than the Supplier, including from the use of unsuitable adhesives, grouts, sealants or other goods or services not permitted or

recommended by the Supplier, the manufacturer, or good installation practice.

- (c) It is the Client's responsibility to provide all information necessary to enable the completion of the Order. The Client will be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.

## 5. Time

- (a) The Supplier will use its reasonable endeavours to supply and deliver the Deliverables by the Completion Date.
- (b) The Client acknowledges and agrees that:
  - (i) delay and disruption in supply and delivery of the Deliverables may occur; and
  - (ii) the Client will hold the Supplier harmless from, and the Supplier is not liable for, any loss, damage or liability in the event of any delay or disruption in relation to the supply and delivery of the Deliverables.

## 6. Price

- (a) The Client must pay the Price to the Supplier in accordance with the Agreement.
- (b) The Price is based on the full quantities specified and do not necessarily operate pro-rata for any greater or lesser quantities.
- (c) Unless expressly stated in the Order, the Price excludes storage, delivery, installation and other ancillary works and services.
- (d) Where the Agreement states that a certain quantity of Deliverables are to be provided, the Price only includes the supply of that quality of Deliverables.
- (e) Unless otherwise indicated, the Price is exclusive of GST. The Client is required to pay all GST in respect of the Deliverables at the time that payment is required.
- (f) The Supplier will provide the Client with a tax invoice in relation to any payment made by the Client to the Supplier under this clause.

## 7. Terms of payment

- (a) Subject to clause 7(b), the Client must pay:
  - (i) a non-refundable deposit equal to 30–50% of the Price on acceptance of the Order (as determined by the Supplier); and
  - (ii) the balance of the Price in accordance with the Order (or, if nothing stated in the Order, at Completion).
- (b) All invoices issued by the Supplier must be paid in full within 5 Business Days from the issuing of the invoice, unless otherwise agreed between the parties. Without prejudice to the Supplier's rights, the Supplier may suspend the supply of the Deliverables where payment is not made in accordance with the Agreement.
- (c) The Supplier may charge the Client interest on overdue payments, calculated on a daily compounding basis at the rate of 10% per annum. The Client agrees that the Supplier is not required to demand payment of outstanding invoices before the Client's liability to the Supplier to remit interest is incurred.
- (d) The Supplier reserves the right to collect outstanding invoices using a debt collection agency. In addition to all other remedies available to it, the parties agree that the Supplier will be entitled to recover from the Client all costs, expenses and disbursements associated with collecting unpaid, outstanding amounts including (without limitation) debt collection agency fees and legal fees on an indemnity basis.
- (e) The Client will hold retention moneys in its trust account.
- (f) Subject to clause 11(g), Orders for Custom Deliverables are not able to be cancelled and are strictly non-refundable.

## 8. Retention of title, delivery, risk and property

- (a) Unless otherwise agreed in writing, Goods will be delivered to the Client at the kerbside of the Site.
- (b) The Client agrees it will pay the Supplier on demand all costs, expenses and losses incurred by the Supplier if:
  - (i) the Client, for any reason, is unable or unwilling to accept supply of the Deliverables when the Supplier is able to supply and deliver the same;
  - (ii) the Client requires delivery of any Goods beyond the kerbside at a Site;

- (iii) more than one attendance at Site is required in relation to a Delivery;
- (iv) the Client causes the Supplier to incur cost, loss or damage as a result of its breach of the Agreement or act or omission not expressly permitted by the Agreement; or
- (v) supply of the Deliverables is delayed or disrupted due to a Force Majeure Event.

- (c) The Client will pay \$250 per hour to the Supplier where it is delayed or disrupted at the Site in attempting to supply any Goods.
- (d) The Supplier is not obliged to supply the Deliverables in one instalment and may elect to deliver the Deliverables in any number of instalments.
- (e) Risk in the Deliverables passes to the Client:
  - (i) progressively with the supply of the Deliverables;
  - (ii) entirely upon delivery to the kerbside of the Site for those Deliverables; and
  - (iii) where the Client is required to arrange alternative storage or delivery directly to the Site of Goods pursuant to clause 8(g)(ii), entirely upon the Client taking possession of the Goods.
- (f) Unless otherwise agreed or stated in the Agreement:
  - (i) the Order does not include any vertical handling; and
  - (ii) the Client will, at the Client's expense, provide prompt labour, cranes or forklifts and reasonable access to the nominated point of delivery for the delivery of Goods.
- (g) If, after 10 Business Days (if the Order relates to the supply of Goods only) or 20 Business Days (in any other case) from the date on which the Goods are ready for despatch to the Site, delivery is delayed due to the Client's act, omission, breach or default, the Supplier may at its election:
  - (i) store the Goods at its premises or elsewhere and the cost of storage (to be charged at the rate of \$30 per week for each crate for the first four weeks, and \$50 per week for each crate thereafter), handling and insurance will be payable by the Client on the Supplier's demand;
  - (ii) require the Client to arrange alternative storage or delivery directly to the Site of the Goods at the Client's cost; or
  - (iii) terminate the Order without liability to the Client or prejudice to the Supplier's rights.
- (h) No supply of Deliverables may be deferred except with the written consent of the Supplier. In the event that the Supplier consents to a deferred supply, the Client must pay to the Supplier any additional costs it incurs as a result of the deferral.
- (i) Until the Client pays the Price to the Supplier in full with any interest due under the Agreement:
  - (i) title in the Deliverables remains with the Supplier;
  - (ii) the Client must not sell or dispose of the Deliverables (unless if they will be sold in the ordinary course of the Client's business and value of the Price held in trust for the Supplier).
  - (iii) the Client will hold the Deliverables as bailee of the Deliverables; and
  - (iv) the Client is required to store any Deliverables separately and mark them accordingly as that they are clearly identified as being or being made from or with any Deliverables which are the property of the Supplier; and
  - (v) where an Insolvency Event occurs in relation to the Client, the Client:
    - (A) must not incorporate the Deliverables in another product;
    - (B) must not sell the Deliverables; and
    - (C) authorises the Supplier to repossess the Deliverables without notice from any location where they are located.
- (j) Notwithstanding clause 8(g), where the Client is uncontactable by the Supplier after reasonable efforts to contact the Client for a continuous period of eight weeks and the Supplier has after this period issued to the Client a notice requiring the Client to respond by a specified deadline:
  - (i) the Supplier may determine that title in the Goods will revert to the Supplier; and
  - (ii) the Supplier will return amounts paid by the Client after the Supplier deducts its costs.

- (k) The Client indemnifies the Supplier against any claim, demand or action arising out of or in connection with the Supplier exercising its right to enter and repossess the Deliverables.
- (l) The Client acknowledges and agrees that the Supplier may register its security interest in the Deliverables on the Personal Property Securities Register.

## 9. Force majeure

The Supplier is not liable to the Client or in breach of the Agreement to the extent that it is delayed, disrupted or in any way affected in its supply of the Deliverables by a Force Majeure Event.

## 10. Batch variation

- (a) While the Supplier will make reasonable endeavours to match the colour, texture and finish of the Deliverables to any colour, texture and finish of samples requested by and provided to the Client (if any), the Client acknowledges that natural, raw products (such as, but not limited to, stone and clay) may vary in both colour and texture. Unless otherwise agreed or stated in the Agreement, the Supplier does not accept any liability relating to any variations in the colour, texture or finish of the Deliverables.
- (b) The Supplier does not guarantee any dimension or tolerance in the Deliverables unless specified in the Order.

## 11. Acceptance of Deliverables

- (a) Subject to clause 9, and within the Defects Liability Period, the Client must notify the Supplier in writing if the Deliverables contain a Defect. The notice must contain the Order number, the supply date, reasonable detail of the Defect and photographs showing the Defect. Failure to give such notice within the Defects Liability Period will constitute an irrevocable acceptance of the Deliverables by the Client.
- (b) The Supplier will use its best endeavours to rectify any Defects notified under clause 11(a) within a reasonable time.
- (c) A Defect in part of the Deliverables will not entitle the Client to reject any other part or all of the Deliverables.
- (d) The Client must make suitable arrangements for access to the Site for the Supplier to rectify Defects, including putting in place any safety measures necessary for the protection of persons and property in the vicinity of the Deliverables.
- (e) The Client acknowledges that any pre-sealing of Deliverables is suitable for protection during construction only and is not suitable as long-term sealer. Unless stated otherwise in an Order the Client is responsible for all sealing and protection of the Deliverables.
- (f) Subject to clauses 11(a) to 11(d), the Client acknowledges and agrees that the Deliverables:
  - (i) cannot be refunded; and
  - (ii) cannot be exchanged for other goods or credit notes.
- (g) At the Client's request, the Supplier may, at its sole discretion and with the payment by the Client of a restocking fee of 30% of the Price, agree to a return of part or all of any Goods which:
  - (i) have not been installed; or
  - (ii) are not Custom Deliverables.

## 12. Free Issue Materials

- (a) The Client may propose to supply Free Issue Materials for use or installation by the Supplier as part of the Deliverables. The Supplier may accept or reject this proposal at the Supplier's discretion.
- (b) Where the Supplier agrees to accept Free Issue Materials:
  - (i) The Client warrants that the Free Issue Materials are in good condition, fit for purpose and free of defect; and
  - (ii) the Supplier accepts no liability whatsoever in relation to the Free Issue Materials or any part of the Deliverables undertaken using the Free Issue Materials.

## 13. Site conditions

- (a) The Client is responsible for all physical conditions at, on, above and below the Site and its near surrounds, including but not limited to artificial things and underground services.
- (b) The Supplier's obligations in relation to the Site are limited to those expressly stated in the Order and, unless otherwise stated, the

Supplier is not required to perform any works or services in relation to the Site.

- (c) The Client must pay to the Supplier all costs, expenses and disbursements incurred by the Supplier in relation to the supply of the Deliverables at the Site.
- (d) Where required, the Client is responsible for:
  - (i) traffic and pedestrian control at the Site;
  - (ii) any government, authority or monopoly fees or charges payable in relation to the Site; and
  - (iii) rubbish disposal.

## 14. Insurance

- (a) Where the Deliverables include the supply of Deliverables at the Site, the Client must have in effect the following insurances for the following amounts:
  - (i) Works insurance – \$10M;
  - (ii) Public Liability – \$10M; and
  - (iii) Workers compensation – Certificate of currency.
- (b) The Client must produce sufficient evidence of the above insurances on request of the Supplier.
- (c) The Client must ensure that the works insurance and public liability insurance referred to in clause 14(a)(i) and 14(a)(ii) insures the interests of the Supplier and its contractors, employees, agents and officers involved in the supply of the Deliverables.

## 15. Breach and termination

- (a) The Supplier may terminate the Agreement by notice in writing to the Client if the Client:
  - (i) breaches the Agreement and fails to rectify its breach following the expiration of 5 Business Days' notice of the breach being given in writing by the Supplier to the Client;
  - (ii) fails to take delivery of Goods within 60 days of those Goods being available for delivery by the Supplier; or
  - (iii) fails to make payment of part or all of the Deliverables within 20 Business Days of receipt of an invoice for payment.
- (b) The Client or the Supplier may terminate the Agreement if an Insolvency Event occurs to the other party.
- (c) The Supplier may terminate the Agreement where its supply of the Deliverables is delayed, disrupted or materially affected by a Force Majeure Event.
- (d) Notwithstanding clause 15(a)(i), the Supplier may instead elect to suspend or delay the delivery or performance of the Deliverables if the Client breaches the Agreement.
- (e) On termination of the Agreement:
  - (i) the Supplier is not required to deliver any further Deliverables for which title has not transferred to the Client; and
  - (ii) the Supplier may take possession of and sell any Deliverables for which title has not transferred to the Client. The Supplier may enter the Client's premises and the Site for this purpose and may return paid amounts after it deducts its costs.
- (f) If a party breaches (including repudiates) the Agreement, nothing in this clause will prejudice the right of the other party to recover damages or exercise any other right or remedy.

## 16. Sub-contracting, novation and assignment

The Supplier may subcontract part or all of the supply of the Deliverables.

## 17. Confidential Information

- (a) These General Conditions and all information exchanged between the parties under the Agreement or gained by either party as a result of performing its obligations under the Agreement are confidential.
- (b) The obligation of confidentiality under this clause is a continuing obligation and remains in force during the term of the Agreement and afterwards for a period of five years.

## 18. Intellectual property rights

The Supplier is not liable to the Client for any infringement or unauthorised use of any patent, trademark, design, copyright or any other industrial property right arising out of performance the Supplier's obligations.

## 19. Warranty and liability of Client

- (a) The Client indemnifies the Supplier against any loss, claim, demand, liability, damage or expense incurred by the Supplier arising out of or in connection with:
  - (i) any misuse of the Deliverables by the Client or any third-parties;
  - (ii) any handling, storage or transport of the Deliverables by the Client or any third-parties;
  - (iii) any act, omission, breach or negligence of the Client;
  - (iv) any representation by the Client as to how the Deliverables will be used;
  - (v) any death or injury to any person due, either in whole or in part, to the act, omission or negligence of the Client; and
  - (vi) any claim by a third-party against the Supplier arising out of or in connection with any of the matters set out in this clause 19(a).
- (b) The Supplier will not be liable to the Client for:
  - (i) losses arising from any design associated with the Deliverables;
  - (ii) losses arising from the supply, partial supply, non-supply, delay or delay in supply of the Deliverables;
  - (iii) unless otherwise agreed in writing, loss or damage arising from recommendations and suggestions provided to the Client;
  - (iv) loss or damage if the Deliverables are not fit for the Client's or a third-party's purpose;
  - (v) loss or damage to the Deliverables arising out of the act, omission or negligence of the Client or its agent or representative;
  - (vi) loss or damage due to the Client's misuse of the Deliverables;
  - (vii) any Defect that is not notified to the Supplier in accordance with clause 11(a);
  - (viii) any indirect, economic or consequential loss whatsoever; or
  - (ix) loss or damage due to the Client's negligent handling of the Goods.
- (c) The liability of the Supplier for breach of any conditions or warranties implied by the *Competition and Consumer Act 2010 (Cth)*, and/or the *Sale of Goods Act 1923 (NSW)* will be limited to one of the following at the Supplier's discretion:
  - (i) the replacement of the Deliverables;
  - (ii) the supply of equivalent Deliverables;
  - (iii) the repair of the Deliverables;
  - (iv) the payment of the cost of replacing the Deliverables;
  - (v) the payment of the cost of acquiring equivalent Deliverables; or
  - (vi) the payment of the cost of having the Deliverables repaired.
- (d) If any limitation on liability stated in these General Conditions is found not to apply then the total liability of the Supplier under or in connection with the Agreement whether in contract, tort, for breach of statutory duty or otherwise must not exceed 10% of the Price.
- (e) To the extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are excluded.

## 20. Dispute resolution

- (a) If a dispute arises, the parties must, prior to the initiation of any legal action use their best efforts in good faith to reach a reasonable and equitable resolution of the dispute.
- (b) The parties agree that in the event a dispute cannot be resolved within 20 Business Days of that dispute arising, it must be referred to senior representatives of each party for resolution.
- (c) The parties agree that in the event a dispute cannot be resolved within 10 Business Days of that dispute being referred to the parties' senior representatives, or such other time as the parties may agree, that dispute may be resolved by way of litigation.
- (d) Nothing in this clause prevents a party from seeking urgent injunctive, or declaratory relief.

## 21. General

- (a) To the extent the Security of Payment Act applies, where there is an inconsistency between the Agreement and the Security of Payment Act, the Security of Payment Act will prevail to the extent necessary to avoid the inconsistency.
- (b) Any notice to be given will be deemed to be sufficiently given if served personally on the Client or on its representative on the Site or to both parties at their respective registered offices and may be hand delivered, sent by prepaid post or respective email address.
- (c) The Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (d) The Agreement contains the whole of the agreement between the parties. No term or condition contained in an Order will add to, amend or delete the terms of the Agreement unless expressly pre-agreed in writing by a duly authorised officer of the Supplier. Unless otherwise specified in the Agreement, the Parties acknowledge that any conditions or obligations in the Client's scope of services or the quotation pertaining to the Order are void and do not form part of the Agreement.
- (e) Nothing in the Agreement constitutes a joint venture, agency, partnership or any other fiduciary relationship between the Client and the Supplier.
- (f) Each party warrants that it is registered for GST and that it will remain registered for GST throughout the term of the Agreement.