

# URBAN PAVING (2021) LIMITED TERMS & CONDITIONS OF TRADE

## 1 - DEFINITIONS

- 1.1 "Seller" means URBAN PAVING (2021) LIMITED, and any company which is directly or indirectly a subsidiary of URBAN PAVING (2021) LIMITED and any duly authorised agent.
- 1.2 "CCLA" means the Contract and Commercial Law Act 2017.
- 1.3 "CGA" means the Consumer Guarantees Act 1993.
- 1.4 "Customer" means the person, authorised agent or legal entity described in the application, or stated on the invoice or order form, buying Goods and/or services from the Seller.
- 1.5 "Goods" has the same meaning as section 119(1) of the CCLA and is any Goods provided by the Seller to the Customer.
- 1.6 "Services" shall mean all services supplied by the Seller to the Customer and includes any recommendations or advice.
- 1.7 "Price" shall mean the purchase price of the Goods and any other costs.

## 2 - ACCEPTANCE

- 2.1 Any instructions received by the Seller from the Customer for the supply of Goods or services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 No agent or representative of the Seller is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by a senior executive of the Seller in writing. The Seller is not bound by unauthorised statements.

## 3 - PRIVACY STATEMENT

- 3.1 The Customer permits the Seller to collect, use, retain and update any information concerning the Customer that it obtains through the supply of Goods and provision of services to the Customer. The Seller may use this information for purposes of assessing the Customer's credit worthiness, to enforce any rights under this contract, or the marketing of any Goods & services provided by the Seller to the Customer.
- 3.2 The Customer permits the Seller to disclose information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Seller holds personal information about an individual associated with the Customer, that individual is entitled to request the correction of their personal information. If such an individual wishes to check the personal information that the Seller may have collected and holds about them please write to The Privacy Officer, 575 Sawyers Arms Road, Harewood, Christchurch 8543.

## 4 - PAYMENT TERMS

- 4.1 Once Goods are ordered payment shall be made for Goods according to the terms and conditions stated herein whether or not the Goods have been delivered and this contract cannot be cancelled by the Customer except where allowed at law.
- 4.2 Unless otherwise required by the Seller, payment for Goods shall be made in full on or before the 20th day of the month following date of invoice, or on the receipt of delivery of Goods, whichever is the earlier (the due date).
- 4.3 A deposit is required on all non-standard items ordered.
- 4.4 Interest at the rate of 2.5% per month or part thereof may be charged on any amount owing after the due date.
- 4.5 Any disbursements, expenses, costs incurred by the Seller for default in payment shall be paid by the Customer, including any debt collection agency fees, court costs or solicitor's fees.
- 4.6 An administration fee of the greater amount of \$25.00 or 10% of the amount overdue will be payable 30 days after due date and the Seller reserves the right to terminate future supply.
- 4.7 Payment will be accepted by cash, electronic banking, credit card or by any other method as agreed in writing by the Seller.

## 5 - PRICE

- 5.1 Prices unless otherwise stated, do not include Goods and services tax, other taxes, levies or tariffs, freight or insurance charges, which if applicable, will be an extra charge to the Customer.
- 5.2 Price will, subject to any manifest error, be specified on the invoice or quotation and will be the current price at time of delivery.

## 6 - RISK AND DELIVERY

- 6.1 All risk in and for the Goods passes to Customer on the earlier of:
  - (a) the Customer takes possession of the Goods; or
  - (b) delivery to the Customer; or
  - (c) when title in the Goods passes to the Customer in accordance with clause 7 (whether or not delivery has been made).
- 6.2 Delivery of Goods shall be deemed complete when the Seller gives possession of the Goods for delivery to the Customer's premises (or other place instructed by the Customer in writing), or possession of the Goods is given to a general carrier, for delivery to the Customer.
- 6.3 Where the Seller delivers Goods to the Customer by instalments and the Seller fails to deliver one or more instalments, the Customer shall not have the right to rescind the contract.
- 6.4 The Seller shall not be liable to the Customer for damage or loss due to failure by the Seller to deliver the Goods promptly or at all.

## 7 - TITLE

- 7.1 Title in the Goods passes to the Customer when the Customer has made payment in full for all Goods supplied by the Seller.
- 7.2 The Customer gives (and shall obtain as required) all necessary authority to the Seller to enter any premises occupied by the Customer to remove any Goods not paid for in full by the Customer. The Seller shall not be liable for damages, costs or expenses or any other losses suffered by the Customer as a result of this action.

## 8 - PRODUCTS MANUFACTURED BY THE SELLER

- 8.1 Where the Goods include any tiling products, or any other Goods manufactured by the Seller:
  - (a) The Customer will (or will require its Customer to), read the Installation Guidelines (if applicable) provided at the time of sale or on delivery in conjunction with all other documentation and other relevant material, and must inspect the Goods;
  - (b) The Goods will be deemed accepted unless the Customer notifies the Seller in writing that there is a defect or error within seven (7) days from the date of sale or the date of delivery; and
  - (c) If the Customer on-sells the Goods it will contract out of the CGA (and any other Consumer Law) to the extent it is able to by law, and this will be recorded in writing wherever practicable, but in all cases when the Goods are on-sold for the purposes of the Customer's business.
- 8.2 If the Customer on-sells Goods manufactured by the Seller it will:
  - (a) Not give any express guarantees or make any representations on behalf of the Seller as manufacturer without the Seller's prior written consent;
  - (b) Advise its Customers to comply with clause 8.1 (to the extent possible); and
  - (c) Contract out of the CGA (and any other Consumer Law) to the extent it is able to by law, and this will be recorded in writing wherever practicable, but in all cases when the Goods are on-sold for the purposes of the Customer's business.

## 9 - LIMITATION OF LIABILITY

- 9.1 The Seller shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the Seller's obligation under this contract or in tort.
- 9.2 Where the Seller is liable to the Customer, the maximum cost of any liability shall not exceed the value of the Goods or services provided by the Seller to the Customer to which the liability has so arisen.
- 9.3 The Seller will not be liable for any loss, cost or expense incurred by the Customer arising in connection with the Goods or services not being suitable for the purpose intended by the Customer, regardless of whether or not the Customer made the Seller aware of that purpose. In selecting the Goods and services, the Customer relies entirely on its own skill and judgment.
- 9.4 Without limiting any other provision in these Terms and Conditions, the Seller does not represent or warrant that any Goods supplied to a Customer will not mottle, pinto or have any efflorescent imperfections, and although the Seller takes all steps reasonable to reduce the risk of the processes above from occurring through a controlled manufacturing process in a closed environment, the Goods are a porous and natural product and therefore the Seller cannot warrant that the Goods supplied will not mottle, pinto or have efflorescent features and does not accept any liability in relation to, or in connection with, any mottling or variation of shade or colour of any Goods.
- 9.5 Any time frames given by the Seller for receipt or delivery of any Goods are indicative only and the Seller does not accept any liability which may result from the provision or delivery of any of any Goods occurring after any date specified by the Seller.
- 9.6 In the course of the Seller's business, the Seller may provide information, recommendations, guidelines,

comments and advice ("Information") in relation to, or in connection with, its Goods. All such Information shall be deemed to be of a general nature only and not personalised or professional advice. To the extent permitted by law, the Seller shall not accept any liability in relation to, or in connection with, the provision of any Information to any Customer or other third party.

## 10 - INDEMNITY AND SUPPORTING GUARANTEE

- 10.1 The Customer agrees to indemnify the Seller, its employees, officers, agents, and any attorney of the Seller (the Indemnified Parties) against all losses, liabilities, damages, claims, action costs or expenses (including legal and solicitor/client costs and expenses) which the Indemnified Parties (or any one of them) may incur, of which have been made against any of the indemnified party as a result or in relation to:
  - (a) Any act, omission, default by the Customer or any subsequent purchaser of the Goods;
  - (b) Any breach of the Customer's obligations under these Terms; and
  - (c) Anything done or omitted to be done or purported to be done or omitted by the Seller or any other indemnified party in the exercise or purported exercise of its rights under these Terms or any matter conferred by law.

## 11 - NON WAIVER

- 11.1 Failure by the Seller to enforce any of the terms & conditions contained in this contract shall not be deemed to be a waiver of any of the rights the Seller has in this contract and is not liable for any indirect loss or expense to the Customer.

## 12 - FORCE MAJEURE

- 12.1 The Seller shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.

## 13 - CONSUMER GUARANTEES ACT 1993

- 13.1 If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the Goods or services under the Contract for the purposes of a business, nothing in the CGA will apply to the supply of the Goods or services.
- 13.2 In the case of any Customer (to which clause 11.1 does not apply), the provisions of these terms and conditions will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

## 14 - JURISDICTION

- 14.1 The contract shall in all respects be deemed to be a contract made in New Zealand and the validity, construction and performance of the contract shall be governed by New Zealand law.

## 15 - RETURN OF GOODS

- 15.1 Except as provided in this clause 13, the Customer is not entitled to return any Goods to the Seller for any reason.

- 15.2 For defective Goods which the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) repairing or replacing the Goods, or refunding the price paid for those Goods provided that:
  - (a) the Customer must notify the Seller in writing within 7 days of delivery that the Goods are defective;
  - (b) the Seller is given a reasonable opportunity to investigate the Customer's claim;
  - (c) the Seller will not be liable for Goods which have been installed, tampered with or modified without the Seller's approval or which have not been stored or used in a proper manner; and
  - (d) the Seller will not be liable to pay the Customer any amount more than the amount (if any) the Customer actually receives from the supplier for the defective Goods.

- 15.3 The Seller may (in its discretion) accept returned Goods for credit on such terms as it requires (in its discretion), including the provision of a restocking and handling fees of such amounts as the Seller may determine (and notify to the Customer) and the amount of any credit will be less any freight costs.

## 16 - PERSONAL PROPERTY SECURITIES ACT 1999

- 16.1 The Customer agrees that it grants to the Seller a Security Interest (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) in all Goods that are supplied to that Customer and their proceeds in respect of which the Seller may register a financing statement on the Personal Property Securities Register.

- 16.2 The Customer hereby waives its rights contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.

## 17 - ASSIGNMENT

- 17.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of the Seller (which may be withheld in its sole discretion).

## 18 - CANCELLATION

- 18.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and services at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage arising from such cancellation.

- 18.2 The Customer may cancel delivery of Goods at the Seller's sole discretion and will be liable for any costs incurred by the Seller.

## 19 - WARRANTIES

- 19.1 Except as provided in these terms and conditions and to the extent permitted by law, all other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise, are expressly excluded.

- 19.2 Dimensions and specifications referred to in a contract, quote, order a catalogue or other publication (whether online or in physical form) maintained or issued by the Seller are estimates only. Unless the Seller agrees in writing, it is not a condition of any contract or these terms and conditions that the Goods will correspond precisely with the dimensions, specifications or customary tolerances. In the absence of customary tolerances, reasonable tolerances will be allowed.

## 20 - INTELLECTUAL PROPERTY

- 20.1 The Seller shall not be liable in respect of any claim which may be made against the Seller for infringement of any letters, patent, registered design or copyright which may arise as a result of the Seller supplying Goods to the Customer in accordance with these terms and conditions, and the Customer agrees to indemnify and keep indemnified the Seller from and against all or any such claims and against all loss, damage, costs and expenses incurred by or recovered against the Seller in respect of any such claim.

- 20.2 Any drawings, specifications and technical data submitted or made available to the Customer by the Seller shall remain the property of the Seller and the Customer shall be liable to the Seller for any loss, damage, cost or expense incurred by the Seller as a result of any unauthorised use or disclosure by the Customer of any such drawings, specifications and technical data.

## 21 - MISCELLANEOUS

- 21.1 If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.

- 21.2 The Customer may not claim any counter claim or set-off against any payments due by it to the Seller.

- 21.3 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

- 21.4 The Seller reserves the right to review and change these terms and conditions at any time and will notify the Customer of this in writing at which time the changes will take effect.

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