

SCOTTS IP GOODS and SERVICES Trading terms and conditions

1. In this agreement -

1.1. clause headings are for convenience and shall not be used in its interpretation and unless the context clearly otherwise -

1.1.1. an expression which denotes any gender includes the others AND a natural person includes an artificial person and vice versa AND the singular includes the plural and vice versa;

1.1.2. the following expressions shall bear the meanings assigned below and cognate expressions bear corresponding meanings -

i). "customer"-shall mean the person whose name appears on the invoice/quotation/credit application which is annexed hereto or which is printed on the reverse side hereof or in any other circumstances, any person or persons at whose request or on whose behalf the supplier undertakes to supply any goods, do any business, or provide any service;

ii). "supplier" – shall mean, collectively or individually as the case may be, SCOTTS IP and/ or any of its subsidiaries from time to time, which supply goods or services to customers;

iii) "goods" - any items or services of whatsoever nature that are supplied by the supplier to the customer in terms hereof;

2. These Terms and Conditions to Prevail

2.1. The only basis upon which the supplier is prepared to do business with the customer is that, notwithstanding anything in any acceptance, order or other document or agreement to the contrary, these terms and conditions shall constitute the sole terms of the agreement between the supplier and the customer and shall operate in respect of any and all business between them.

2.2. No Variations or Amendments - This agreement constitutes the whole agreement between the customer and the supplier relating to the subject matter hereof and no amendment to, cancellation or variation of this agreement or any waiver or indulgence which would otherwise give rise to estoppel, shall be binding unless recorded in a written document signed by an authorised representative of the supplier.

3. Quotations and Orders - Any quotation given is not an offer by the supplier to sell the goods but constitutes an invitation by the supplier to the customer to do business with the supplier and it may be revoked at any time by the supplier. The supplier may accept or reject in whole or in part any order placed upon it by the customer and a contractual obligation to supply shall only exist if, after acceptance of the quotation, the supplier confirms that a contract exists or tenders supply of goods. An order may not be withdrawn until accepted or rejected by the supplier.

4. Purchase Price and Payment

4.1. Orders are accepted by the supplier only on the basis that the prices charged will be those ruling at the date of despatch of the goods, unless otherwise expressly stated. A copy of the suppliers ruling prices from time to time may be obtained from it.

4.2. The customer shall be obliged to pay to the supplier in addition to the contract price herein -

4.2.1. the amount of any tax (including GST), duty or other charge (including an amount equal to any withholding tax) of any nature whatsoever imposed by any law or regulation AND any other additional costs of any nature whatsoever arising due to factors beyond the control of the supplier. For example the supplier may increase the purchase price in respect of any goods supplied in order to make provision for any increases in costs.

4.3. Any expense incurred by the supplier at the instance of the customer including those incurred in modifying or otherwise altering or making additions to the design, quantities or specifications for goods, shall be paid in addition to the relevant purchase price.

4.4. The purchase price payable to the supplier in respect of any goods shall be payable by the customer to the supplier, at the supplier's head office or at such other place as the supplier may direct from time to time, in cash AND in Australian Dollars

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4.5 The purchase price and delivery is ex-works/warehouse and unless specifically provided to the contrary, excludes insurance and freight, which shall be paid directly by the customer or reimbursed to the supplier, at the supplier's instance. The customer may not withhold payment nor set off any amount due to the customer by the supplier. Goods repaired may be sold by the supplier to defray repair / storage costs if not collected within 30 days of repair.

5. Risk - The risk in any relevant goods shall pass to the customer on delivery thereof by the supplier to the customer.

6. Delivery - Any delivery date indicated by the supplier shall be regarded as the estimated date of delivery and is not binding on the supplier. The customer shall accept delivery whenever it is tendered. The customer shall inspect all goods upon delivery and shall endorse the delivery note as to any missing or damaged goods, failing which any claim for missing or damaged goods is waived. In respect to deliveries by SCOTTS IP's courier, if the customer is asked to receive delivery damaged goods, the customer is not to accept delivery and immediately call SCOTTS IP on (03) 9008-5696 to notify staff of the damage. Delays in delivery due to any act or omission of the customer shall render it liable to pay storage costs. If the supplier agrees to engage a third party to transport the goods, it is hereby authorised to engage a third party on the customer's behalf.

7. Warranties and Guarantees

7.1. Some laws in Australia imply rights, terms and conditions into some contracts that are incapable of exclusion. To the extent permitted by law, no rights, terms, conditions, warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on the supplier, the customer irrevocably waiving any right (common law or otherwise) it may have to rely thereon, and the goods are purchased on the basis that they are taken "as is" and with the exclusion of all common law and other remedies.

7.2. To the extent that goods supplied by the supplier are in any way defective, the customer shall be entitled, within 30 days of the delivery of the relevant goods, to claim the replacement or repair of goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the supplier, in the supplier's sole opinion (which shall be binding on the customer), of which defects the supplier shall have been notified in writing by the customer within 10 days after the defect arises. The supplier shall not be responsible for costs incurred in dismantling or fitting replacement parts or reassembling the goods. The supplier's liability shall be limited on return to the supplier of the goods or parts thereof, to what is set out above.

7.3. To be valid a claim in terms of the guarantee as set out in clause 7.2.-it must be in writing and must be supported by the original tax invoice. In addition the goods must be returned to the supplier in their original undamaged packaging with all documentation intact.

7.4 If a right, term or condition is implied into this agreement by a law that cannot be excluded, to the extent permitted by law, the rights of the customer in respect of a breach of the implied right, term or condition (and any other right, term or condition under this agreement), are limited to such of the following as is chosen by the supplier, namely replacement of the goods or supply of equivalent goods, the repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods, payment of the cost of repairing the goods, supply the service again or payment of the cost of having the services supplied again.

7.5. The supplier does not warrant that the goods will be fit for any purposes.

7.6. The supplier shall have no liability in terms of clause 7.2 if repairs or modifications have been made by persons other than the supplier; if any goods are operated with any equipment or part not specifically supplied or approved in writing by the supplier; or the goods were not operated, installed or maintained properly and in accordance with the supplier's instruction.

7.7. Repairs or replacements are not subject to a new guarantee.

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8. Handling Fee - The supplier may levy a fee of 10% of the purchase price of goods returned to and accepted by the supplier. This fee will be payable by the customer.

9. Ownership - Ownership (or in the case of software, the non-exclusive and non-transferable right to use the object code) any goods shall not pass to the customer, notwithstanding installation, until the purchase price and interest has been paid. Accession shall not apply. Copyright and title to all intellectual rights in all operating software and documentation remains vested in the supplier.

10. Insurance - The supplier may require the customer, at its own expense and at any time, to insure the goods with a reputable insurer and thereafter keep the goods insured until paid for in full and the customer hereby cedes such policy to the Supplier.

11. Breach

11.1. Subject to clause 11.2., if the customer breaches any of the terms or conditions hereof or any other agreement with the supplier or fails to pay any amount when due or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice the supplier's rights hereunder or at all, or allows any judgement against it to remain unsatisfied or is placed into provisional or final liquidation or sequestration or judicial management or receivership, the supplier shall have the right, without prejudice to any other right, to elect to -

i). despite any credit payment terms the supplier might have granted to the customer treat as immediately due and payable all amounts which would otherwise only become due and payable in the future or

ii). cancel this agreement and retake possession of any of the goods sold.

11.2 The supplier has no obligation to perform in terms hereof while the customer has not performed all its obligations. No claim will arise against the supplier unless the customer has afforded 30 days written notice for the rectification of the cause. Amount due and payable to the supplier shall be determined and proven by a certificate issued by the supplier.

12. No Cession - The customer shall not be entitled to cede or assign any rights and/or obligations to any third party.

13. Costs - The customer shall be liable for all costs incurred by the supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges legal costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction thereof.

14. Exemption and Indemnity –To the extent permitted by law, the customer shall have no claim of any nature whatsoever whether for damages, reduction of purchase price, cancellation or otherwise, against the supplier, its servants or agents, in respect of any loss or damage sustained by the customer of any nature.

15. Severability - Each paragraph or clause in this agreement is severable the others and if any are found by any competent court to be defective or unenforceable for any reason whatever, the remaining paragraphs or clauses shall be of full force and effect.

16. Force Majeure - Any transaction is subject to cancellation by the supplier due to force majeure from any cause beyond the control of the supplier, including, inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

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17. Interest - The customer shall pay interest to the supplier on all amounts not paid on due date at the rate charged by Westpac Banking Corporation for business overdrafts plus 7.83% per annum or the highest rate permissible by law, compounded monthly in arrears, reckoned from the due date until date of payment.

18. IPR – If the goods delivered by SCOTTS IP is software or contains software then all rights in and to and related to such software, including copyright, shall at all times remain vested in the supplier, save that the customer shall, against payment, acquire a non-exclusive, non-transferable right to use the compiled object code version of it and shall be precluded from decompiling or reverse engineering or re-engineering same or attempting to do so.

SPECIAL CONDITIONS

Any signed orders to the supplier will carry a 30% cancellation fee payable upon cancellation by the customer.

The terms and conditions of the SCOTTS IP agreement shall take precedence at all times, between SCOTTS IP and the customer.

All goods delivered shall remain the property of the owner until paid in full. A faxed order received from the customer with the customer's name displayed constitutes a legal binding purchase order. A faxed order received from the customer or from the premises of the customer constitutes a legal binding purchase order to the supplier.

All software purchase orders will carry a 100% cancellation fee.

Any peripheral equipment, not supplied by SCOTTS IP will VOID the warranty offered by SCOTTS IP. The customer agrees to abide by the guidelines as set by SCOTTS IP. This is referred to as the Corporate CI as set by SCOTTS IP. The customer agrees to be honest and ethical at all times and agrees to uphold a positive representation of SCOTTS IP. Should the customer not abide by these guidelines and the guidelines as set in the Corporate CI, the customer is liable for all losses as a result.

The customer agrees to abide by the terms and conditions as per the most recent SCOTTS IP customer contract.

The customer agrees not to divulge any price lists or any confidential information to any third parties without the written consent of SCOTTS IP and takes full responsibility and liability should such an event take place.

SCOTTS IP's details

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