

Horizon Landscapers Terms and Conditions

Definitions

1. In these terms and conditions, unless contrary to or inconsistent with the context:

Credit Card Transaction Fee means a fee calculated by multiplying the amount of a payment made under this agreement by the Credit Card by the appropriate credit card rate (currently 4.5% for Dinners and American Express and 1% for all other types of credit card);

Credit report and credit reporting agency has the meaning given to it by the Privacy Act 1988;

Customer, you, your means the person or persons specified in the relevant Sales Invoice or Quote;

Customer's Associates means any agent, representative, invitee, employee or sub-contractor of the Customer.

Default Rate means 2% per annum or such other amount as advised by Horizon from time to time;

Deposit means the amount (if any) specified in a Quote which must be paid before Horizon will commence works in relation to a Customer's project.

Goods means the plants, chattels and any materials supplied or agreed to be supplied to the Customer by Horizon from time to time.

GST means the goods and services tax as imposed by the *A New Tax System (Goods and Services) Act 1999* (or if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia) and any regulation made under that Act, and "tax invoice" has the meaning set out in that Act.

Guarantor means the person or persons specified in the Quote as a guarantor and any officer or agent of a Customer accepts a Quote for that Customer.

Horizon means Horizon Landscapers Pty Ltd (ACN 651 349 736) and where the context permits, includes its officers, employees, agents or contractors.

Price means the price charged by Horizon for Goods and Services as set out in a Sales Invoice;

Quote means the form of quotation submitted by Horizon to the Customer in which these terms and conditions are deemed to be incorporated

Sales Invoice means the sales invoice issued by Horizon to the Customer in which these terms and conditions are or are deemed to be incorporated

Services means services, tasks or works specified in a Quote and includes any incidental services, tasks or works necessary for the performance the project specified in the Quote.

Site means the address of location where the Horizon will carry out its works under these terms and conditions.

Supply Fee means the price charged for Goods ordered by the Customer;

taxable supply, tax invoice consideration, GST and supply have the meanings given to those expressions in the *A New Tax System (Goods and Goods Tax) Act 1999*;

this agreement means the agreement that incorporates these general conditions;

Variation Request means a request to vary a Quote

we, us, our means Horizon.

Quotes, prices and payment

2. Any Quote issued by Horizon is valid for 30 days unless extended by Horizon by a written notice to the Customer. Additions and changes to a Quote will only apply if they have been separately agreed in writing by Horizon.
3. Prices stated in a Quote are (unless otherwise stated) expressed to be exclusive of, but subject to, GST and you that where GST is applied to any price the amount payable shall be increased by multiplying the GST exclusive amount by the then applicable rate of GST.
4. The Customer may accept a Quote verbally or in writing, and is bound by these terms and conditions and any additional terms specified in our Quote at the time that communication of that acceptance is received by Horizon. No contractual relationship shall arise between the parties until communication of that accepted has been received by Horizon. Any additional terms or conditions which you may include in an Order (or in any other documentation) do not apply and are void.
5. If a Quote specifies that a Deposit is payable, Horizon will not be deemed to have accepted a Quote until that Deposit is paid in full. Deposits are not refundable unless stated in writing in the Quote.
6. The Customer must pay the Price in the instalments and at the intervals (if any) specified in a Sales Invoice by the time specified in that document. Payment advice must clearly set out all Sales Invoices that are being paid. Payment may be allocated to the oldest outstanding item or Sales Invoice at Horizon's option.
7. If the Price is paid to Horizon by credit card, the Customer must also pay the Credit Card Transaction Fee payable on the date of the payment to which it relates.
8. If you wish to alter the scope of works set out in a Quote, you must complete, sign and submit to Horizon a Variation Request. If the Variation Request is accepted by Horizon

(in its absolute discretion), Horizon will a new Quote which may be accepted by the Customer under clause 4 of these terms and conditions. If accepted, the Variation Quote will be the Quote for the purpose of these terms and conditions.

Supply of Goods and Services

9. If Horizon supplies the Customer with Goods under these terms and conditions:
 - a) Horizon will deliver the Goods to the Site specified in the Quote and use reasonable endeavours to do so on date specified in the Quote;
 - b) title to, risk and property in the Goods passes to the Customer upon delivery of the Goods, and it is the Customer's responsibility to insure the Goods from that time;
 - c) the Customer must pay the Price for the Goods by the time specified in the applicable Sales Invoice;
 - d) until all Sales Invoices in respect of the Goods are paid in full, Horizon reserves rights of ownership of the Goods, the right to enter the address where the Goods were delivered (or the premises where the Goods are located) without liability for trespass or any resulting damage to retake possession of the Goods, and the right to keep or resell any of the Goods so repossessed; and
 - e) the Customer agreed to hold the Goods as a bailee for Horizon, to keep the Goods separate from other goods, and to label the Goods (or not remove labels) so that they are identifiable as our Goods.
10. If Horizon supplies the Customer with Services under these terms and conditions:
 - a) Horizon will use exercise due care, skill and attention in supplying the Services in relation to the Site specified in the Quote in the Quote;
 - b) cancellation of the supply of Service not received 3 business days before an agreed start of work date will be subject to a charge of 15% of the Price specified in the Quote;
 - c) the Customer must pay the Price for the Services by the time specified in the applicable Sales Invoice.
11. If delivery of Goods or the supply or Services is delayed for any reason whatsoever, you will not be entitled to claim for any loss or damage (whether direct, indirect, consequential or special), or cancel, rescind or terminate these terms and conditions.
12. The Customer is solely responsible for ensuring that all works conducted by Horizon under these terms and conditions comply will all applicable laws, including environmental laws and planning requirements.
13. Horizon's liability for any breach of any warranty or consumer guarantee for goods or services is (to the extent permitted by law) limited to re-supplying the Goods or Services

in respect of a supply, repairing, or paying the cost to repair, the Goods, or refunding the costs of those Goods or Services (in Horizon's sole discretion). To the fullest extent permitted by law all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness for any purpose of goods or services supplied by Horizon to the Customer are expressly excluded. However, nothing in these terms and conditions is intended to limit or exclude any liability on the part of Horizon where and to the extent that applicable law prohibits such exclusion or limitation.

How Horizon work with you

14. You agree to provide Horizon with water and electricity which is required for any works at the Site.
15. Horizon's normal work hours will be from 7.30pm to 4.30pm unless otherwise specified in the Quote.
16. You must allow Horizon to store Goods or other materials to be stored on the Site or at another address agreed to by us for the duration of the works conducted under these terms and conditions.
17. Unless the Quote specifies that Horizon will undertake ongoing maintenance works, the Customer will be responsible for the well-being and maintenance of living plant material (including turf), or the maintenance of structures or installations, such as decks, rails or paving, following practical completion of the work specified in the Quote. In particular, Horizon accepts no responsibility for any damage to the Site or plants, Goods or materials after practical completion of our works as a result of weather (including but not limited to damage caused by drought, wind, rain or frost) or for maintenance such as weeding, pruning or on-going care and maintenance of plants. A separate Quote can be provided for ongoing maintenance if requested.
18. If you wish to substitute any plant or materials specified in a Quote, you will need to submit a Variation Request.
19. You agree to Horizon using non-identifying photographs (or, with your consent, identifying photographs or information) of work undertaken at the Site in Horizon's promotional material and on its social media platforms (including but not limited to Facebook). Horizon may display corflute signs at the Site while Horizon staff are present. Unless you tell us otherwise, we may send you promotional material about our services from time to time.

Failure to pay

20. If you default in the payment of any money under these terms and conditions, interest will be charged on the amount owing and unpaid from time to time at the Default Rate as

from and including the due date for payment until it has been repaid. At the end of every calendar month any unpaid interest shall be capitalised for the purpose of calculating interest, namely it will be added to and increase the amount due and owing and further interest shall be charged on the sum of the amount then due and owing and the unpaid interest at the Default Rate.

21. If any Sales Invoice (or part thereof) remains outstanding for a period of more than fourteen (14) days, without limiting any other rights and remedies Horizon may have, the Customer hereby charges in Horizon's favour any real or personal property in which the Customer has an interest with payment of that outstanding account (Charge) and the Customer irrevocably authorises Horizon to lodge a caveat to notify and protect that Charge in relation to any real property in which the Customer has an interest at the Customer's cost.
22. If any Sales Invoice (or part thereof) remains outstanding for more than thirty (30) days, the Customer authorises Horizon to provide the Customer's particulars and the particulars of the unpaid debt to any credit reporting agency to notify the default in payment.
23. All costs and disbursements incurred by Horizon in recovering payment of any overdue amount or enforcing its rights under these terms and conditions, including without limitation, legal costs on a solicitor and client basis, are payable by the Customer. Horizon may retain any documents or Goods held on the Customer's behalf pending payment of any outstanding Sales Invoice, and amounts received by Horizon may be applied first against interest, charges and expenses.

Credit

24. The Customer agrees that Horizon may obtain a credit report on the Customer (and if there is a Guarantor, on the Guarantor) from a credit reporting agency for the purpose of assessing the Customer's application for credit and otherwise satisfying itself as to the credit worthiness of the Customer and the Guarantor. Horizon will comply with section 18M of the Privacy Act 1988.

Our liability

25. Horizon will not take responsibility for any damage to (or cost involved with) any underground hazards, obstructions or services not made known to us in writing or apparent on visual inspection. These must be advised or visually brought to any to the attention of Horizon's staff at the Site nominated in the Quote.
26. Horizon will not be held liable where circumstances beyond its reasonable control prohibit Horizon from performing its obligations under these terms and conditions. These include but are not limited to:

- a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, intentional damage to property or damage to property caused by the negligent act or omission of any person (including a servant or agent of a party) other than a party, fire, lightening, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination; or
- b) any action or inaction of any government or governmental or other competent jurisdiction, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; and a breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material
- c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- d) "includes" in any form is not a word of limitation

27. These terms and conditions are construed and to be enforceable in and according to the laws of Tasmania, and to the subject to the jurisdiction of the courts of that state

Security for payment

28. The Customer grants and Horizon may register on the Personal Property Securities Register, a security interest in all and any sale of Goods under these terms and conditions, including but not limited to all other present or after-acquired property.

29. The Customer and Horizon agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, Horizon. The Customer waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by Horizon in respect of the security interest created by these terms and conditions.

30. You agree to execute any documents, provide all relevant information and co-operate fully with Horizon to ensure we have a perfected security interest in the personal property charged and, if applicable, a Purchase Money Security Interest (PMSI). The Customer agrees that, until all monies owing to Horizon are paid in full, you shall not sell or grant any other Security Interest in the Goods.

General

31. The Customer is bound by these terms and conditions and any additional terms specified in our Quote each time you place an Order with Horizon. Any additional terms or

conditions which you may include in an Order (or in any other documentation) do not apply and are void.

32. Headings in these terms and conditions are for convenience only and do not affect their interpretation.

33. If you are a trustee of any trust, you agree to and accept into these terms and conditions on your own behalf and in your capacity as trustee of that trust.

34. Unless the context indicates a contrary intention:

- a) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- c) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- d) a reference to a document (including these terms and conditions) is to that document as varied, novated, ratified or replaced from time to time;
- e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

35. Horizon will not be held liable where circumstances beyond our reasonable control prohibit us from performing our obligations under this Agreement. These include but are not limited to:

- a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact in law), martial law, intentional damage to property or damage to property caused by the negligent act or omission of any person (including a servant or agent of a party) other than a party, fire, lightening, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination; and
- b) any action or inaction of any government or governmental or other competent jurisdiction, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally

enforceable order; and a breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material.

36. To the maximum extent permitted by law, under no circumstances will Horizon be liable to the Customer for any indirect, incidental, special or consequential damages of any kind, including without limitation damages for loss of business or other profits, arising out of or referable to this agreement or any act done or omitted to be done under or by reason of this agreement, whether caused by the negligence of or breach of statutory duty by Horizon or otherwise.
37. No waiver or indulgence by any party shall be binding upon that party unless in writing and in any event no waiver of one breach of any these terms or conditions shall operate as a continuing waiver unless so expressed nor shall it operate as a waiver of another breach of the same or any of these terms or conditions.
38. Any notice or other document or writing required to be served on any party may be served by prepaid ordinary post and any such notice or other document in writing shall be deemed to be served five business days after it was so posted. Any notice or other document or writing required to be served on the Customer by Horizon may be served by email at the Customer's email address which it may have notified to us in writing from time to time.

Guarantee and indemnity

1. In consideration of Horizon having agreed at the request of the Guarantor to supply Goods and/or Services these terms and conditions to the Customer, the Guarantor does (and if more than one jointly and severally) HEREBY GUARANTEE to Horizon the due and punctual performance by the Customer of its obligations under these terms and conditions and the Guarantor HEREBY ACKNOWLEDGES and declares that this Guarantee shall be a continuing guarantee for the whole of the moneys hereby secured and shall not be avoided released or affected in any way by:
 - a) any agreement or arrangement made between Horizon and the Customer whether with or without the consent of the Guarantor or by any alterations or variations to the rights or obligations of either of them;
 - b) the granting of any time or other indulgence or forbearance by Horizon to the Customer whether or not the granting of such further time or other indulgence imposes further liabilities on the Guarantor;
 - c) the fact of or notice of the death mental incapacity bankruptcy or liquidation of the Customer or the Guarantor or any of them;
 - d) any composition or arrangement with or release of the Customer or any composition or arrangement with or release of any one or more of the Guarantor or any other surety or person by Horizon whether the consent of the Guarantor or any of them to any of the foregoing shall have been obtained or notice thereof given to him or not or any omission or delay on the part of Horizon;
 - e) the fact that any money payable by the Customer is not or may cease to be or any part thereof cease to be recoverable from him or from any of the Guarantor or other person or that the Customer be discharged from all or any of Customer's obligations to pay such money or any part thereof for any reason other than that the same have been paid;
 - f) any change in membership of the Customer or any partnership or firm of which the Customer is a member or the death liquidation or bankruptcy of the Customer or any member of the Customer or the assent of Horizon to any composition arrangement or scheme in respect of the Customer or the acceptance by Horizon of any dividend or sum of money thereunder, and Horizon shall be at liberty to regard the Guarantor in all respects as principal debtors and shall not be obliged to take action first against the Customer.
2. The Guarantor further acknowledges and declares that the obligations of the Guarantor shall not merge or be deemed to have merged in any judgement obtained by Horizon against the Customer and the Guarantor shall remain liable to Horizon in the terms of

this Guarantee notwithstanding that Horizon may in the meantime obtain a judgement against the Customer.

3. Any payment made to Horizon and later avoided by the application of any statutory provision shall be deemed not to discharge the Guarantor's liability and in any such event the parties are to be restored to the rights which each respectively would have had if the payment had not been made.
4. Further, in consideration of Horizon having agreed to supply Goods and/or Services to the Customer on the terms and conditions herein contained at the request of the Guarantor, the Guarantor further covenants with Horizon to save harmless and indemnify Horizon from and against all losses damages costs and expenses which Horizon may suffer as a result of Horizon entering into this agreement including but without limitation all costs incurred by Horizon as a result of or arising out of enforcing its rights under this agreement or any other security held by Horizon in respect of the obligations of the Customer hereunder or in any way incidental to this agreement or any other such security or in defending any action, claim or demand made against it by the Customer and insofar as it may be necessary so to do in order to give full effect to this indemnity the Guarantor shall waive any rights of recourse they might otherwise have or have had against the Customer arising out of this indemnity.
5. If the Customer is wound up and a liquidator of the Customer shall lawfully disclaim these presents at any time, no such disclaimer shall operate so as to relieve the obligations of the Guarantor to Horizon pursuant to this indemnity AND IT IS EXPRESSLY AGREED THAT the provisions of this indemnity shall survive any termination of this agreement arising out of any such disclaimer.
6. It is expressly agreed that this indemnity shall continue notwithstanding any agreement or arrangement or variation of any agreement between Horizon and the Customer and the provisions of the Guarantee hereinbefore given shall with the necessary changes apply to this indemnity.
7. In the event that there is more than one person or corporation constituting the Guarantor or there is any other co-surety then it is expressly agreed between each Guarantor who executes this agreement and Horizon that the failure of any one or more Guarantor or any other co-surety to execute this agreement or any document as the case may be or the fact that this guarantee is not binding on any one or more Guarantor who executes the same for any reason whatsoever or that any one or more Guarantor is for any reason whatsoever discharged from their obligations hereunder shall not in any way relieve them or the others of them as the case may be from liability under this guarantee and indemnity.

8. In the event that the consideration specified herein is found to be past consideration the Guarantor agrees that Horizon may adduce evidence of other consideration to support the Guarantee.
9. For the said consideration the Guarantor hereby charges their respective right, title and interest in any land which they or any of them now have or at any time hereafter may have to secure their obligations under the terms of this guarantee. If Horizon lodges a caveat over all or any of the said real estate it is under no obligation to withdraw that caveat but must execute a withdrawal of that caveat presented to it by the Guarantor for that purpose once the Guarantor has satisfied all of its obligations under this agreement.