

PM SPRAY ON PAVING/PM CONCRETE/PM INDUSTRIES TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 PM Spray On Paving / PM Concrete / PM Industries includes its successors and assigns or any person acting on behalf of and with the authority of PM Spray On Paving / PM Concrete / PM Industries.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by PM Spray On Paving / PM Concrete / PM Industries to the Client.
- 1.3 "Goods" means all Goods or Services supplied by PM Spray On Paving / PM Concrete / PM Industries to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.4 "Equipment" shall mean all Equipment including any accessories supplied on hire by PM Spray On Paving / PM Concrete / PM Industries to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by PM Spray On Paving / PM Concrete / PM Industries to the Client.
- 1.5 "Services" shall mean all Services supplied by PM Spray On Paving / PM Concrete / PM Industries to the Client and includes any advice or recommendations.
- 1.6 "Price" shall mean the price payable for the Services as agreed between PM Spray On Paving / PM Concrete / PM Industries and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by PM Spray On Paving / PM Concrete / PM Industries from the Client for the supply of Services and/or the Client's acceptance of Services supplied by PM Spray On Paving / PM Concrete / PM Industries shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of PM Spray On Paving / PM Concrete / PM Industries.
- 3.4 The Client shall give PM Spray On Paving / PM Concrete / PM Industries not less than seven (7) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by PM Spray On Paving / PM Concrete / PM Industries as a result of the Client's failure to comply with this clause.
- 3.5 Services are supplied by PM Spray On Paving / PM Concrete / PM Industries only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.6 Upon acceptance of the quote a 20% non-refundable deposit must be made to secure booking date.

4. Price and Payment

- 4.1 At PM Spray On Paving / PM Concrete / PM Industries sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by PM Spray On Paving / PM Concrete / PM Industries to the Client or
- (b) PM Spray On Paving / PM Concrete / PM Industries quoted Price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of (30) days.
- 4.2 PM Spray On Paving / PM Concrete / PM Industries reserves the right to change the Price:
- (a) if a variation to the Goods/Equipment which are to be supplied is requested; or
- (b) If a variation to the Service originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design etc.) which are only discovered on the commencement of the Service; or
- (d) In the event of increases to PM Spray On Paving / PM Concrete / PM Industries in the cost of labour or materials which are beyond PM Spray On Paving / PM Concrete / PM Industries control.

- 4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due upon completion.
- 4.4 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and PM Spray On Paving / PM Concrete / PM Industries.
- 4.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods/Equipment

- 5.1 At PM Spray On Paving / PM Concrete / PM Industries sole discretion delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated address (in the event that the Services are delivered by PM Spray On Paving / PM Concrete / PM Industries or PM Spray On Paving / PM Concrete / PM Industries nominated carrier).
- 5.2 At PM Spray On Paving / PM Concrete / PM Industries sole discretion the costs of delivery is either included in the Price or is an addition to the Price.
- 5.3 The failure of PM Spray On Paving / PM Concrete / PM Industries to deliver shall not entitle either party to treat this contract as repudiated.
- 5.4 PM Spray On Paving / PM Concrete / PM Industries shall not be liable for any loss or damage whatsoever due to failure by PM Spray On Paving / PM Concrete / PM Industries to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of PM Spray On Paving / PM Concrete / PM Industries.

6. Risk

- 6.1 If PM Spray On Paving / PM Concrete / PM Industries retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
- 6.2 If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the client PM Spray On Paving / PM Concrete / PM Industries is entitled to receive all insurance proceeds payable for the Goods.
- 6.3 Where the Client has supplied materials for PM Spray On Paving / PM Concrete / PM Industries to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. PM Spray On Paving / PM Concrete / PM Industries shall not be responsible for any defects in the Services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 6.4 The Client acknowledges that variations of colour, sheen and texture are inherent in concrete PM Spray On Paving / PM Concrete / PM Industries shall not be held responsible for any loss, damage or costs howsoever arising resulting in any variation of the colour, sheen or texture between different areas of the product.
- 6.5 PM Spray On Paving / PM Concrete / PM Industries gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the works such as:
- (a) hairline cracking of paving, grout, shrinkage or;
 - (b) damage caused by contact with chemicals, solvents, oils or any other substance; or
 - (c) the affects by elements such as heat exposure or wet weather conditions that prolong or accelerate the curing process.
 - (d) we do not warrant against efflorescence.
- 6.6 The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and resurfacing and shall take all reasonable precautions to protect against damage by way of vandalism. In the event the concrete or resurfacing is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 6.7 PM Spray On Paving / PM Concrete / PM Industries shall not be liable for any defect in the Services if the Client does not follow PM Spray On Paving / PM Concrete / PM Industries recommendation to:
- (a) water the concrete for a periodically to limit the risk of possible cracking due to weather conditions;
 - (b) no foot traffic and/or any vehicles on the concrete for a minimum of (72) hours but preferably (7) days;
 - (c) no heavy furniture and/or machinery to be placed on the concrete area for a minimum of (72) hours;
 - (d) no staining or chemical substances to be used over the concrete;
 - (e) no use of vibrating machinery/tools on or around the concrete during curing
 - (f) follow any other recommendations or advice PM Spray On Paving / PM Concrete / PM Industries may provide
- 6.8 Where PM Spray On Paving / PM Concrete / PM Industries gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the worksite for the laying, grinding or polishing of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon the PM Spray On Paving / PM Concrete / PM Industries shall require the Client or their agent to authorise commencement of the Services in writing. Should this not be done PM Spray On

Paving / PM Concrete / PM Industries shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

7. Underground Locations

- 7.1 Prior to PM Spray On Paving / PM Concrete / PM Industries commencing any work the Client must advise PM Spray On Paving / PM Concrete / PM Industries of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, fuel services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, plumbing services, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst PM Spray On Paving / PM Concrete / PM Industries will take all care to avoid damage to any underground services the Client agrees to indemnify PM Spray On Paving / PM Concrete / PM Industries in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 7.1.

8. Title

- 8.1 PM Spray On Paving / PM Concrete / PM Industries and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid PM Spray On Paving / PM Concrete / PM Industries all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to PM Spray On Paving / PM Concrete / PM Industries in respect of all contracts between PM Spray On Paving / PM Concrete / PM Industries and the Client.
- 8.2 Receipt by PM Spray On Paving / PM Concrete / PM Industries of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognised and until then PM Spray On Paving / PM Concrete / PM Industries ownership or rights in respect of the Services shall continue.
- 8.3 It is further agreed that:
- (a) until such time as ownership of the Services shall pass from PM Spray On Paving / PM Concrete / PM Industries to the Client PM Spray On Paving / PM Concrete / PM Industries may give notice in writing to the Client to return the Services or any of them to PM Spray On Paving / PM Concrete / PM Industries. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
- (b) if the Client fails to return the Services to PM Spray On Paving / PM Concrete / PM Industries then PM Spray On Paving / PM Concrete / PM Industries or PM Spray On Paving / PM Concrete / PM Industries agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services.

9. Errors and Omissions

- 9.1 The Client shall inspect the Services on delivery and shall within two (2) days of delivery (time being of the essence) notify PM Spray On Paving / PM Concrete / PM Industries of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford PM Spray On Paving / PM Concrete / PM Industries an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which PM Spray On Paving / PM Concrete / PM Industries has agreed in writing that the Client is entitled to reject, PM Spray On Paving / PM Concrete / PM Industries liability is limited to either (at PM Spray On Paving / PM Concrete / PM Industries discretion) replacing the Services or rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services, or replacement of the Services.

10. Default and Consequences of Default

- 10.1 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonor fees incurred by PM Spray On Paving / PM Concrete / PM Industries.
- 10.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify PM Spray On Paving / PM Concrete / PM Industries from and against all costs and disbursements incurred by PM Spray On Paving / PM Concrete / PM Industries in pursuing the debt including legal costs on a solicitor and own client basis and PM Spray On Paving / PM Concrete / PM Industries' collection agency costs.
- 10.3 Without prejudice to any other remedies PM Spray On Paving / PM Concrete / PM Industries may have, if at any time the Client is in breach of any obligation (including those relating to payment), PM Spray On Paving / PM Concrete / PM Industries may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. PM Spray On Paving / PM Concrete / PM Industries will not be liable to the Client for any loss or damage the Client suffers because PM Spray On Paving / PM Concrete / PM Industries has exercised its rights under this clause.
- 10.4 Without prejudice to PM Spray On Paving / PM Concrete / PM Industries other remedies at law PM Spray On Paving / PM Concrete / PM Industries shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PM Spray On Paving / PM Concrete / PM Industries shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to PM Spray On Paving / PM Concrete / PM Industries becomes overdue, or in PM Spray On Paving / PM Concrete / PM Industries opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

11. Security and Charge

11.1 Despite anything to the contrary contained herein or any other rights which PM Spray On Paving / PM Concrete / PM Industries may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to PM Spray On Paving / PM Concrete / PM Industries or PM Spray On Paving / PM Concrete / PM Industries nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that PM Spray On Paving / PM Concrete / PM Industries (or PM Spray On Paving / PM Concrete / PM Industries nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should PM Spray On Paving / PM Concrete / PM Industries elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify PM Spray On Paving / PM Concrete / PM Industries from and against all PM Spray On Paving / PM Concrete / PM Industries costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint PM Spray On Paving / PM Concrete / PM Industries or PM Spray On Paving / PM Concrete / PM Industries nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

12. Cancellation

12.1 PM Spray On Paving / PM Concrete / PM Industries may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice PM Spray On Paving / PM Concrete / PM Industries shall repay to the Client any sums paid in respect of the Price. PM Spray On Paving / PM Concrete / PM Industries shall not be liable for any loss or damage whatsoever arising from such cancellation.

12.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by PM Spray On Paving / PM Concrete / PM Industries (including, but not limited to, any loss of profits) up to the time of cancellation.

13. Privacy Act 1988

13.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for PM Spray On Paving / PM Concrete / PM Industries to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by PM Spray On Paving / PM Concrete / PM Industries.

13.2 The Client agrees that PM Spray On Paving / PM Concrete / PM Industries may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

13.3 The Client consents to PM Spray On Paving / PM Concrete / PM Industries being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

13.4 The Client agrees that personal credit information provided may be used and retained by PM Spray On Paving / PM Concrete / PM Industries for the following purposes (and for other purposes as shall be agreed between the Client and PM Spray On Paving / PM Concrete / PM Industries or required by law from time to time):

- (a) the provision of Services; and/or
- (b) the marketing of Services by PM Spray On Paving / PM Concrete / PM Industries, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or

- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 13.5 PM Spray On Paving / PM Concrete / PM Industries may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client
- 13.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that PM Spray On Paving / PM Concrete / PM Industries is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of PM Spray On Paving / PM Concrete / PM Industries, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Clients credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by PM Spray On Paving / PM Concrete / PM Industries has been paid or otherwise discharged.

14. Building and Construction Industry Security of Payment Act 1999 (NSW)

- 14.1 At PM Spray On Paving / PM Concrete / PM Industries sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 1999 (NSW) may apply.
- 14.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 1999 (NSW), except to the extent permitted by the Act where applicable.

15. Equipment Hire

- 15.1 The Equipment shall at all times remain the property of PM Spray On Paving / PM Concrete / PM Industries and is returnable on demand by PM Spray On Paving / PM Concrete / PM Industries. In the event that the Equipment is not returned to PM Spray On Paving / PM Concrete / PM Industries in the condition in which it was delivered PM Spray On Paving / PM Concrete / PM Industries retains the right to charge the Price of repair or replacement of the Equipment.
- 15.2 The Client shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by PM Spray On Paving / PM Concrete / PM Industries to the Client.
- 15.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, PM Spray On Paving / PM Concrete / PM Industries interest in the Equipment and agrees to indemnify PM Spray On Paving / PM Concrete / PM Industries against physical loss or damage including, but not limited to, the perils of 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 or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the State in which the sale was made and are subject to the jurisdiction of the courts of that same State.

- 16.3 PM Spray On Paving / PM Concrete / PM Industries shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PM Spray On Paving / PM Concrete / PM Industries of these terms and conditions.
- 16.4 In the event of any breach of this contract by PM Spray On Paving / PM Concrete / PM Industries the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 16.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PM Spray On Paving / PM Concrete / PM Industries nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 PM Spray On Paving / PM Concrete / PM Industries may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 PM Spray On Paving / PM Concrete / PM Industries reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which PM Spray On Paving / PM Concrete / PM Industries notifies the Client of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by PM Spray On Paving / PM Concrete / PM Industries to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PM Spray On Paving / PM Concrete / PM Industries right to subsequently enforce that provision.

17. You The Client Will:

- 17.1 It is the Client's responsibility to obtain Council approval if required for any Services to be completed on Council land before any PM Spray On Paving / PM Concrete / PM Industries Service commences.
- (a) Remove all motor vehicles and not permit any motor vehicles to be parked on or next to the premises prior to and while the job is in progress.
- (b) Keep all children, pets and visitors away from PM Spray On Paving / PM Concrete / PM Industries employees at all times while the job is in progress.
- (c) Supply all electricity and water as required by PM Spray On Paving / PM Concrete / PM Industries, should this not be supplied additional charges may be added to your original quote.