



TERMS AND CONDITIONS

The Company will issue the Agreement for supply or hire of Equipment and/or Goods, which the Customer/Hirer or agent of the Customer/Hirer will sign upon receipt of the Equipment and/or Goods and pay the total invoice amount if prepayment has not been made. If signed by an agent of the Customer/Hirer, he or she warrants that they shall have authority for and on behalf of the Customer/Hirer. By signing this Agreement where indicated on the Tax Invoice and/or the Delivery Docket the Customer/Hirer agrees to have read all the terms forming the Agreement. The Company reserves its rights to amend any Terms, Definitions or Conditions within the entirety of this document at any time. In the event where delivery of Goods and/or Equipment is made by the Company and the Customer/Hirer is not present at the delivery site, the Company will take a photograph of the delivered Goods and/or Equipment delivered as Proof of Delivery. In such circumstances, the Company will not be held responsible for the Goods and/or Equipment, and all Terms and conditions as set out in this document will apply.

In these Terms, the following expression will, where the context admits, have the following meaning:

DEFINITIONS

- "the Company" means Thomson Landscape & Garden Supplies P/L trading as Berowra Sand & Soil, ABN 75 001 832 220 and any other related companies whether by common directors or otherwise including the entity listed on the Tax Invoice and any subsidiaries and/or assignees of these entities.
- "The Agreement" means these Terms, the credit application and the credit terms (if applicable), the Tax Invoice and/or Delivery Docket, Packing Slip as is applicable between the Company and the Hirer.
- "Equipment" means the equipment provided to the Hirer pursuant of the Terms and Conditions as provided and advised.
- "Charges" means the amount specified in the Tax Invoice and/or Delivery Docket, Packing Slip as being the charge by the Company for the rendering of Service, supply or hire of equipment and/or goods.
- "Customer/Hirer" means the person to or for whom the Equipment and the Services are provided by the Company. If the Customer comprises more than one person, the expression includes each of them jointly and severally.
- "Delivery Docket" means the document titled Tax Invoice and/or Delivery Docket, Packing Slip, Driver Day Sheet issued by the Company to the Customer.
- "Hire Period" means the period specified on the Tax Invoice and/or Delivery Docket, Packing Slip and is the period from which the hire commences when the Customer takes possession of the Equipment or when the Company delivers the Equipment to the location in accordance with the Customer's instructions, whichever is earlier ('Delivery Date' specified on the Tax Invoice and/or Delivery Docket, Packing Slip), and the period of hire ends when the Equipment is back in the possession of the Company.
- "Service and/or Description" means the Service or Goods Supplied/Ordered described in the Tax Invoice and/or Delivery Docket, Packing Slip.
- "Site Address" means the location of where the Service, Goods or Equipment is located/supplied and used when in the Customer's possession.
- "Tax Invoice" means the document titled tax invoice issued by the Company to the Customer/Hirer.
- "Goods" means Goods supplied by Thomson Landscape & Garden Supplies P/L trading as Berowra Sand & Soil (and where the context so permits, shall include any supply of Services)
- "Extra Service" means the attempted delivery of Equipment and/or Goods that requires a re-delivery, diversion or re-stock.
- "Terms" means the Terms and Conditions, contained within and referenced in the document, as mentioned by the Company and directed to the Customer/Hirer
- "Risk" means All Risk relating to the Supply of Equipment and/or Goods, to the Customer/Hirer, passes all liability onto those at the point of delivery.



HIRE PERIOD

1. The Customer/Hirer hires the Equipment for the Hire Period.
2. All hire charges are quoted GST inclusive and payable in advance unless prior arrangement is made.
3. Long term hire rates are by arrangement with the Company. Hire charges are subject to change without notice, unless a quote has been given by the Company.

CUSTOMER/HIRER OBLIGATIONS

1. The Customer/Hirer will be responsible for any public or private property including damage to the site or neighbouring properties.
2. The Customer/Hirer will be liable for the cancellation of any delivery after loading has occurred and/or where goods are returned as a result of wrong selection or inappropriate for use.
3. The Customer is responsible for the cleanliness, security and safekeeping of the Equipment at all times during the Hire Period.
4. The Customer must not, make any alterations or improvements to the Equipment without the prior written consent of the Company.
5. The Customer is liable to the Company for loss or damage in excess of reasonable wear and tear.

TITLE

1. The Customer/Hirer acknowledges that in all circumstances the Company retains title to the Equipment and/or Goods and in no circumstances will it be deemed to be a fixture. The rights of the Customer/Hirer to use the Equipment and/or Goods are as within their Legal rights of ownership, and/or until have been paid for in full. The Customer is not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment or Goods in any such way without the written consent of the Company.

INDEMNITY

1. The Customer/Hirer will compensate the Company for any loss or damage caused to the Company's Equipment and/or Goods at current market value of Equipment, valued at the time of the reporting of the loss or damage.
2. The Customer/Hirer agrees to defend, hold nameless and indemnify the Company against claims, lawsuits and any other liability or injury to persons or damage to property or the environment connected with or relating to the use of the Equipment and/or Goods by the Customer/Hirer or breach any warranty by the Customer/Hirer or the use or the means of access or other routes by the Company.
3. On delivery the Company's vehicle must have clear access to the site. Any further attempts made for the delivery will be classified as "extra service" and so duly charged.
4. Once the Company vehicle has left the site, there shall be no deferred claim for any damage to any structure, fixture and area of access as directed by the Customer/Hirer.

CHARGES AND PAYMENTS

1. The Customer/Hirer must pay the Company for the delivery and collection of the Equipment and/or Goods provided by the Company in accordance with the Charges within thirty (30) days after the date of Tax Invoice or as agreed by the Company. Additional charges will be incurred for overloading of the Equipment.
2. Payment is accepted by cash, credit card or electronic funds transfer. The Company accepts Visa, AMEX or MasterCard without surcharge, except for large orders which may incur a 1.5% transaction fee to be charged at the discretion of the Company. A 1.5% transaction fee will be charged for refunds processed by Visa, AMEX or MasterCard, irrespective of the size of the purchase.
3. If the Customer/Hirer cancels the Service on route then the Company reserves the right to charge a Return Cartage and Unloading fee at the Company's discretion.
4. The Company does not accept any responsibility for incorrect orders placed by the Customer/Hirer.



5. The Company will not accept any return of Product and will not issue any credit notes to the Customer in the event that the Customer places an incorrect order, including but not limited to situations:
 - a. where the Customer orders too much Product and then does not require the surplus; or
 - b. where the Customer orders the incorrect colour or type of Product required; or
 - c. for change of mind.
6. If the Customer/Hirer wishes to cancel an order, the Company must be notified within a reasonable time period. In the event where the Company will be unable to recover the cost of the Equipment and/or Goods due to cancellation, such as special orders, the Customer/Hirer will be charged 100% of the original purchase amount.
6. In no event whatsoever will Thomson Landscape & Garden Supplies P/L be liable for any delay in deliveries, however:
 - a. Thomson Landscape & Garden Supplies P/L will endeavour to deliver within the delivery time specified (if any) upon receipt of sale;
 - b. allocated times are an estimate and not a term of the contract.

SPECIAL ORDERS

1. Thomson Landscape & Garden Supplies P/L WILL NOT recognise any Claims made by the Customer after 7 days of delivery of the Product.
2. Thomson Landscape & Garden Supplies P/L WILL NOT recognise any Claims by the Customer in relation to faulty Product after installation of the Product.
3. Thomson Landscape & Garden Supplies P/L will deliver all Product to Council kerbside.
4. If the Customer requires that the Product be delivered beyond council kerbside, then the Customer will be required to sign an Owner Acknowledgment and Indemnity form. The Owner Acknowledgement and Indemnity form will be available from Thomson Landscape & Garden Supplies' P/L office or from Thomson Landscape & Garden Supplies' P/L driver.
5. Thomson Landscape & Garden Supplies' P/L does not accept any responsibility for the Product delivered after delivery, including but not limited to Product left on unattended sites.
6. That there may be a variation in the colour and texture of the Product between the brochures, displays or samples and the raw Product.
7. If they wish to maintain evenness of Product as to colour and texture that they should order from the same batch and, once the Product is on site they should continually work from all pallets to ensure regular blending, even on single colours.
8. All pallets left on site and not made available for return to Thomson Landscape & Garden Supplies' P/L within 30 days of supply will be charged at \$20.00 per pallet plus GST, or such other fee as may be decided by Thomson Landscape & Garden Supplies P/L from time to time and communicated to the Customer in writing.
9. All special orders of non stock items require full upfront payment.

DEFAULT

1. The Customer/Hirer is deemed to be in default immediately upon the happening of any of the following events:
 - a. if any payment to the Company is not made promptly on/or before the due date for payment;
 - b. if the Customer/Hirer ceases to carry on business or stops or suspends payment or states its intention of so



- doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to the Company is dishonored;
- c. if an order is made for the sequestration of the Customer's estate or the Customer becomes bankrupt;
 - d. if the Customer/Hirer becomes insolvent, enters into any composition or arrangement with its creditors or makes an assignment for the benefit of its creditors or enters into compulsory or voluntary liquidation (not being a voluntary liquidation only for the purpose of amalgamation or reconstruction);
 - e. if a receiver, manager or similar person is appointed in respect of the Customer or any asset of the Customer;
 - f. if the Customer/Hirer fails to observe and perform any obligations set out in these Terms or the Agreement;
 - g. if the Customer/Hirer causes anything to be done or permit or suffer any actual thing whereby the Company's rights in the Equipment and/or Goods may be prejudiced or put in jeopardy.
2. In the event of a default by the Customer/Hirer, then without prejudice to any other rights which the Company may have at law or under the Agreement, and without notice to the Customer/Hirer:
- a. the Company or its agents may enter the Customer/Hirer premises or any premises under the control of the Customer/Hirer for the purposes of recovering the Equipment and/or Goods.
 - b. the Company may in its absolute discretion, charge interest at the rate of 6% per month on the amount due and this interest will be added to the Customer/Hirer account at the end of each monthly period and compounded until the date full payment is received by the Company.
 - c. the Customer/Hirer must pay all legal costs, stamp duty where applicable, and any expenses incurred by the Company in connection with the recovery for all amounts due to the Company.
 - d. Payments outside of terms or non-payment of accounts due may be claimed by the Company pursuant to the Building and Construction Industry Security of Payment Act 1999 NSW.
 - e. the Company may, at its discretion, request early settlement of the account should the Customer/Hirer exceed the agreed credit limit.

CHANGES

1. The Company reserves the right to charge the Customer/Hirer extra for difficult access which has not been advised, quoted or known of until on site. Difficult access is defined as time consuming factors such as obstructions, uneven ground, narrow or height restricted access etc. Waiting time is also chargeable at the Company's discretion. These extra charges will be applied in an additional invoice as "Labour" @ the rate of \$80 per hour (GST exclusive), based on the extra time spent in completing the delivery function and this Labor charge will be payable by the Customer in addition to the supplied Tax Invoice.
2. The Customer/Hirer must advise the Company in writing of any changes in its business structure as shown in the Tax Invoice and/or Delivery Docket within two (2) business days of such a change occurring. The person or entity, shown in the Company's records as the Customer/Hirer, remains liable to the Company for Services supplied until such time as the person or entity operating the new business structure has executed these Terms.
3. Nothing contained in this Agreement prevents the Company from charging, assigning, pledging, mortgaging, transferring or otherwise disposing of, in whole or part, its rights hereunder. Should the Company make such assignments and should it default in the performance of any of the terms or conditions of this Agreement the Customer/Hirer may not, as to such assignee, terminate this Agreement or subject the Customer/Hirer's obligation to pay money under this Agreement to any diminution or right of set-off.

ACCESS

1. The Customer/Hirer warrants that any access provided by the Customer/Hirer for the Equipment and/or Goods, reaching the location is sufficient to bear the weight, empty or loaded, of all of the Equipment and/or Goods and vehicle combined, as reasonably required to perform the Service. The Company is not be responsible for damage to any private or public pavement, roadway, driveway or any access accompanying surface of any access or other route reasonably necessary to perform the Service.
2. Whenever possible the Customer/Hirer must have a representative on site at the time of delivery or erection of Equipment and/or Goods. The Customer/Hirer must ensure that the site is served by a firm access road and that the site is firm, level, free from flooding, back-fill trenches, trees, ground and overhead obstructions. The Customer/Hirer is responsible for indicating clearly the safe location of any overhead or underground pipes, wires or other conduits or services which might suffer damage occasioned by the transport, erection, or dismantling of the Equipment or unloading of the Goods. The Company is not liable for any damage or loss to the Customer/Hirer's site, site access, plants, overhead or underground conduits or services occasioned



thereby, and the Customer/Hirer shall indemnify the Company from and against all actions, claims, costs, demands and liabilities in connection therewith. Any resulting additional costs, including reasonably incurred legal costs by the Company, shall be paid by the Customer/Hirer.

3. To the extent that the Customer/Hirer controls the site located at the Site Address, the Customer/Hirer must provide access to the Company for the purposes of its delivery of its Equipment and/or Goods on the collection day or immediately on termination of this Agreement, whereby the Company may access the Site Address without notice.
4. Any infringement notices e.g. Council, RMS etc, issued as a result of the Equipment and/or Goods being placed on local council or public land are the responsibility of the Customer/Hirer.

WARRANTIES

1. The Company's liability is limited to, to the extent permissible by law and at the Company's option;
 - a. in relation to the Equipment and/or Goods:
 - i. the replacement of the Equipment and/or Goods or the supply of equivalent equipment;
 - ii. the repair of the Equipment and/or Goods;
 - iii. the payment of the cost of replacing the Equipment and/or Goods or of acquiring equivalent Equipment and/or Goods; or
 - iv. the payment of the cost of having the Equipment and/or Goods repaired.
 - b. in relation to the Services:
 - i. the supply of the Services again; or
 - ii. the payment of the cost of having the Services supplied again.
2. To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer/Hirer for:
 - a. any increased costs or expenses;
 - b. any loss of profit, revenue, business, contracts or anticipated savings;
 - c. any loss or expense resulting from a claim by a third party; or
 - d. any special, indirect or consequential loss or damage of any nature whatsoever caused by the Company's failure to perform any obligations in accordance with these Terms.

MISCELLANEOUS

1. These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
2. If any conflict of differences exists in the Terms between terms which are printed and those which are typed or written, the typed or written language shall govern.
3. All notices shall be sent by either party to the address indicated on the face hereof by ordinary mail, fax or email and shall be deemed to have been duly delivered two (2) business days from the date of posting or if faxed or emailed, on the next business day.
4. The Company's decision is final in all matters relating to these Terms.
5. These Terms constitute the entire agreement of the parties and supersedes all prior agreements.