

# Terms of trade

## 1. Definitions

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In these conditions unless the context otherwise requires:

- Company means Tight Spot.
- Buyer or "you" means the person, or company buying the goods from the Company.
- Products and/or services mean the products and/or services being purchased by the Buyer from the Company.
- Contract means the contract between the Company and the Buyer for the purchase of the goods.
- Date of the contract means where the contract arises from a quotation given by the Company, i) the date of acceptance of the order by the Company; or ii) Where the contract arises from a quotation given by the Company, the date upon written notification of acceptance of the quotation is received by the Company.
- Contract price means the price of goods or services as agreed between the Buyer and the Company.
- Person includes a corporation, association, firm, company, partnership or individual.
- Quotation shall mean price on offer for a fixed term.
- PPSA means the Personal Property Securities Act 1999.
- Major Terms means the major terms and conditions attached to the Quote or Estimate provided by the Company.

## 2. Acceptance

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If any instruction is received by the Company from the Buyer for the supply of products and/or services, it shall constitute acceptance of the terms and conditions contained herein and our Major Terms attached to the Quote or Estimate from the Company. Upon acceptance of the quote or estimate by the Buyer, these terms and conditions shall be definitive and binding.

## 3. Terms and Conditions

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These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and the services made by the Buyer after the date and time

at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of the Buyer. Any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

## 4. Major Terms

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### 4.1 Identification of Hazards

It is your responsibility to identify where pipes, lines and underground services are located or easements are. You are also required to advise us if any of your trees, buildings or plant life are protected. It is a condition of this contract that you advise of any hidden items and remove where possible or clearly mark such items if you are unable to remove them. All breakages other than fair wear and tear together with the associated costs involved will be added to our account.

### 4.2 Safety

If we feel the job or any part of it is unsafe or may endanger our equipment or any person or animal, we have the right to stop work and leave the unsafe part, or if necessary the whole job, unfinished with no penalty to us. We reserve the right to charge for the work that has been completed up to the point that the unsafe aspect of the job has been identified.

### 4.3 Price, Payment, Default Interest and Costs

- (a) Payment of invoices is to be made by mail within 7 days of invoice being sent ("**the due date**") without demand, deduction or set-off.
  - (b) If our invoice shows a discount, that discount will only apply if the invoice is paid by the due date on the invoice.
  - (a) If payment is not made by the due date default interest may be charged by us, at a rate of 2% per month ("the default rate") for the period during which the payment is overdue. Default interest shall continue to accrue at the default rate on the overdue amount after judgment has been obtained by us for recovery of all amounts claimed.
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- (b) We are entitled to pass the collection of any overdue amounts on to a debt collection agency or the like and we are also entitled to provide details about you and the outstanding debt to any credit reporting service.
- (c) You will pay our legal costs (as between solicitor and client) and collection costs of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these terms.

#### **4.4 Title**

- (a) The goods delivered by us to you will remain our sole and absolute property as legal and equitable owner until such time as all money due to us has been paid to us, but will be at your risk from the time of delivery of it.
- (b) You acknowledge that you are in possession of all such goods as bailee for us until such time as property in the goods passes to you pursuant to this agreement.

#### **4.5 Disputes**

If you wish to raise any dispute you must do so within 14 days of the date of our invoice. Any claim must be accompanied by full details including (without limitation) the exact nature of the claim and invoice number.

#### **4.6 Claim Against us for Damage**

If you wish to claim that we have caused damage while working for you, you must raise any such claim within 7 days of the alleged damage taking place.

### **5. PPSA**

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- 5.1. The Contract constitutes a security interest in the goods supplied by the Company to the Buyer for the purposes of the PPSA as security for payment by the Buyer of all amounts due under the Contract, including any future amounts.
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- 5.2. The Buyer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest over the Buyer, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company.
- 5.3. To the extent that Part 9 of the PPSA applies, the Buyer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Buyer's benefit, or place any obligations on the Company in the Buyer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 5.4. To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Buyer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.
- 5.5. The Buyer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

## **6. Governing laws**

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These Terms of Trade will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the products and/or services or these Terms of Trade.

## **7. Dispute resolution**

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The Company will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

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