

## Terms of Trade

### **1 Terms of contract**

- 1.1 Any products, materials or services we supply to you shall be subject to these terms (*Terms*), unless we agree in writing to change them.
- 1.2 If you accept any products, materials or services from us, you will be deemed to accept these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.
- 1.3 If there is a conflict between these Terms and any other provisions that we have agreed with you in writing, the other provisions shall prevail.

### **2 Price**

- 2.1 The price for products, materials and services will be either as stated in writing in our estimate or, if no written estimate is provided, at our standard charges applying at the time.
- 2.2 You will be solely responsible for the accuracy of any information on which any estimate is based. Unless otherwise agreed in writing any estimate may be altered or withdrawn prior to delivery of goods or provision of services to you. Our estimate is not a quotation. Our estimate is valid for 30 days.
- 2.3 The cost may be increased or decreased by 60 days notice by us to you in our sole discretion by the amount of any increase or decrease in the cost of any items affecting the cost of production and/or installation between the date of the estimate and the date of installation. Alterations to any price will be effective from the date specified by us at the time of giving notice to you. However, if we increase the total price by more than 5% then you may, within 7 days of receiving notice of any price increase, by notice to us cancel the contract provided that the work has not commenced.
- 2.4 Unless otherwise stated in writing, prices are exclusive of delivery costs (including insurance), GST or other applicable tax or levy, all of which will be for your account.

### **3 Payment**

- 3.1 Unless we have agreed in writing to extend you credit, you must pay in advance for materials and services at the time the work commences. You must pay us by cash, cheque or electronic funds transfer in cleared funds. You must pay us without deduction or set off.
- 3.2 If full payment for the contract work is not made on the due date, then without prejudice to any other remedies available to us:
  - (a) we may cancel or withhold supply of materials and/or services;
  - (b) we may charge you interest at the rate of 2% per month or part thereof and interest shall continue to accrue both before and after judgment; and
  - (c) you will be responsible for all costs incurred by us in recovering such monies.

### **4 Ownership**

- 4.1 Ownership in the materials we supply shall not pass upon delivery, but shall remain with us until you have paid all monies that you owe us. Until you pay us in full:
  - (a) you shall hold the materials supplied as bailee for us;

- (b) You irrevocably give us and our agents the right to enter your property without notice, to uplift and remove any of the materials for re-sale.

## **5 Security Interest**

- 5.1 You hereby grant us a security interest in all product and materials supplied by us to you and in the proceeds of such product and materials, should you sell or otherwise dispose of them. Our security interest shall serve as security for all amounts owing by you to us at any time, from any cause.
- 5.2 You will provide us on request with all information necessary for the registration of our security interest in terms of the Personal Property Securities Act 1999.

## **6 Risk and Delivery**

Risk in respect of the product/materials sold shall pass to you when the product/materials are delivered to the address you specify.

## **7 Warranties**

- 7.1 *General: Warranties*  
Except to the extent of written warranties given by us to you, all warranties and representations including those expressed or implied by law in respect of products or services supplied are excluded to the maximum extent permitted by law.
- 7.2 In particular (but without limitation) we shall not be liable:
  - (a) where you have altered or modified the product/materials, misapplied the goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
  - (b) for loss or delays caused by any factors beyond our control;
  - (c) for any indirect or consequential loss of any kind;
  - (d) where you have failed to notify us in writing of any damage or defect within 7 days of its occurrence or first manifestation;
- 7.3 Our total liability under any warranty for defective or damaged products/materials supplied by us or in relation to the provision of services or workmanship by us or our agents is limited at our option to either:
  - (a) repairing or replacing the defective or damaged products, materials and/or work; or
  - (b) refunding the price of the defective or damaged products, materials and/or work.

## **8 General Terms**

- 8.1 *Cancellation by you*  
You may not cancel the contract work or part of it without our written consent. If you do so, in addition to any other rights we may have, we will retain any deposit paid. We may also charge you for any costs incurred up to the point of cancellation.
- 8.2 *Cancellation by us*  
We shall be entitled without liability to you to cancel if:
  - (a) you become insolvent, enter into a scheme of arrangement with creditors (other than with our consent) or have a receiver appointed in respect of any or all of your assets or other steps are taken for your dissolution;
  - (b) you or we are refused any licences, consents or permits in respect of the goods or services; or
  - (c) you breach any of these Terms.
- 8.3 *Waiver or Variation*  
Waiver or variation of these Terms by us will only be effective if given in writing by an authorised person. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.

#### 8.4 Severability

Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.

#### 8.5 Governing Law

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.

#### 8.6 Disputes

(a) If a dispute arises between us, then we will negotiate with each other in good faith in an effort to settle it within 10 days of the time when the dispute arose.

(b) If negotiation fails to resolve the dispute within 10 days, then we will attempt in good faith to agree within a further 10 days on an alternative method of resolving the dispute, such as mediation or arbitration.

#### 8.7 The Privacy Act 1993

You authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information by us, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties including our subsidiaries, related companies and shareholders. You understand that you have a right of access and may request correction of personal information held by us about you.

#### 8.8 Limitation of Liability

To the extent that the Consumer Guarantees Act 91 of 1993 or any similar national legislation apply to these terms, then certain conditions and warranties will be implied into these terms to the benefit of you and those conditions and warranties cannot be excluded, restricted or modified by any provision of these terms. However, if you are carrying on a 'business' as defined in the Consumer Guarantees Act 91 of 1993 you agree you are acquiring our services for the purposes of that business and nothing in that Act shall apply. Except as provided for in these terms we will not in any circumstances be liable for any loss, damage or injury of any kind arising out of or in any way connected with the performance of the products, materials or services we supply to you howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act by us, our employees, agents or sub-contractors

You will indemnify us against all claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury of any kind arising out of or in any way connected with the performance of the products, materials or services we supply to you howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act by us, our employees, agents or sub-contractors

### 9 Definitions

9.1 In these Terms unless the context otherwise requires or it is specifically otherwise stated:

(a) "we", "us" and "our" means South Pacific Teak Decking Limited and our assigns.

(b) "you" and "your" means any client of ours.