

## 1. Definitions

- 1.1 "Expert Turf" means Expert Turf Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Expert Turf Services Limited.
- 1.2 "Client" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Expert Turf 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 "Price" means the Price payable for the Goods as agreed between Expert Turf and the Client in accordance with clause 5 below.

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Expert Turf's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Expert Turf.

## 3. Change in Control

- 3.1 The Client shall give Expert Turf not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Expert Turf as a result of the Client's failure to comply with this clause.

## 4. Purchase orders

- 4.1 The Client acknowledges and agrees where the Client does not elect to control their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by Client and/or any other third party acting on behalf of the Client to which the Goods are charged to the Client's credit account, shall remain at all times payable by the Client. All said notices of restrictions pertaining to purchases must be writing and will remain in place until such time as the Client revokes.
- 4.2 The Client agrees to notify Expert Turf in writing immediately upon the departure of the Client employee if an authorised account user. Failure to advise Expert Turf of such departures, then the Client acknowledges they will be bound by all purchase orders made by that account user.

## 5. Price and Payment

- 5.1 At Expert Turf's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Expert Turf to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to Expert Turf's current price list; or
  - (c) Expert Turf's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Expert Turf reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services 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, the discovery of latent or unfavourable soil conditions such as liquefaction residue or risk, etc.) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to Expert Turf in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Expert Turf's control.
- 5.3 At Expert Turf's sole discretion a deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Expert Turf, which may be:
  - (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Expert Turf's payment schedule;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Expert Turf.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Expert Turf.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Expert Turf an amount equal to any GST Expert Turf must pay for any supply by Expert Turf under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 6. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
  - (a) the Client or the Client's nominated carrier takes possession of the Goods at Expert Turf's address; or
  - (b) Expert Turf (or Expert Turf's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At Expert Turf's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Expert Turf shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Expert Turf may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by Expert Turf to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Expert Turf will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## 7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Expert Turf is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Expert Turf is sufficient evidence of Expert Turf's rights to receive the insurance proceeds without the need for any person dealing with Expert Turf to make further enquiries.
- 7.3 If the Client requests Expert Turf to leave Goods outside Expert Turf's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 The Client accepts and acknowledges that natural turf and any other flora, foliage or vegetation supplied by Expert Turf are organic in nature and require care and maintenance. Expert Turf reserves the right to not accept liability for the plants where such plants may have become affected or died due to the Client's failure to properly maintain the plants and/or to follow any instructions or guidelines provided by Expert Turf in regard to the proper care of the plants (including but not limited to, adequate watering of the plants).

## 8. Accuracy of Clients Plans & Measurements for Orders

- 8.1 Expert Turf shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Expert Turf accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Expert Turf places an order based on these measurements and quantities. Expert Turf accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

## 9. Access

- 9.1 The Client shall ensure that Expert Turf has clear and free access to the work site at all times to enable them to undertake the works. Expert Turf shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Expert Turf.

## 10. Underground Locations

- 10.1 Prior to Expert Turf commencing any work the Client must advise Expert Turf 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, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst Expert Turf will take all care to avoid damage to any underground services the Client agrees to indemnify Expert Turf 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 10.1.

## 11. Title

- 11.1 Expert Turf and the Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid Expert Turf all amounts owing to Expert Turf; and
  - (b) the Client has met all of its other obligations to Expert Turf.
- 11.2 Receipt by Expert Turf of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to Expert Turf on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Expert Turf and must pay to Expert Turf the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Expert Turf and must pay or deliver the proceeds to Expert Turf on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Expert Turf and must sell, dispose of or return the resulting product to Expert Turf as it so directs.
  - (e) the Client irrevocably authorises Expert Turf to enter any premises where Expert Turf believes the Goods are kept and recover possession of the Goods.
  - (f) Expert Turf may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Expert Turf.
  - (h) Expert Turf may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 12. Personal Property Securities Act 1999 ("PPSA")

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by Expert Turf to the Client (if any) and all Goods that will be supplied in the future by Expert Turf to the Client.
- 12.2 The Client undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Expert Turf may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Expert Turf for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Expert Turf; and
  - (d) immediately advise Expert Turf of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 Expert Turf and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Expert Turf, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by Expert Turf under clauses 12.1 to 12.5.

## 13. Security and Charge

- 13.1 In consideration of Expert Turf agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies Expert Turf from and against all Expert Turf's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Expert Turf's rights under this clause.
- 13.3 The Client irrevocably appoints Expert Turf and each director of Expert Turf as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

## 14. Client's Disclaimer

- 14.1 The Client hereby disclaims any right to rescind, or cancel any contract with Expert Turf or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Expert Turf and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## 15. Defects

- 15.1 The Client shall inspect the Goods on delivery and shall within twenty-four (24) hours of installation (time being of the essence) notify Expert Turf of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Expert Turf an opportunity

to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Expert Turf has agreed in writing that the Client is entitled to reject, Expert Turf's liability is limited to either (at Expert Turf's discretion) replacing the Goods or repairing the Goods.

- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above.

## 16. Warranty

- 16.1 To the extent permitted by statute, no warranty is given by Expert Turf as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Expert Turf shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

## 17. Consumer Guarantees Act 1993

- 17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Expert Turf to the Client.

## 18. Intellectual Property

- 18.1 Where Expert Turf has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Expert Turf.
- 18.2 The Client warrants that all designs, specifications or instructions given to Expert Turf will not cause Expert Turf to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Expert Turf against any action taken by a third party against Expert Turf in respect of any such infringement.
- 18.3 The Client agrees that Expert Turf may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Expert Turf has created for the Client.

## 19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Expert Turf's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Expert Turf any money the Client shall indemnify Expert Turf from and against all costs and disbursements incurred by Expert Turf in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Expert Turf's collection agency costs, and bank disbursement fees).
- 19.3 Without prejudice to any other remedies Expert Turf may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Expert Turf may suspend or terminate the supply of Goods to the Client. Expert Turf will not be liable to the Client for any loss or damage the Client suffers because Expert Turf has exercised its rights under this clause.
- 19.4 Without prejudice to Expert Turf's other remedies at law Expert Turf shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Expert Turf shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to Expert Turf becomes overdue, or in Expert Turf's opinion the Client will be unable to make a payment when it falls due;
  - (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.

## 20. Cancellation

- 20.1 Expert Turf may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Expert Turf shall repay to the Client any money paid by the Client for the Goods. Expert Turf shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Expert Turf as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

## 21. Privacy Act 1993

- 21.1 The Client authorises Expert Turf or Expert Turf's agent to:
  - (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by Expert Turf from the Client directly or obtained by Expert Turf from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Client shall have the right to request Expert Turf for a copy of the information about the Client retained by Expert Turf and the right to request Expert Turf to correct any incorrect information about the Client held by Expert Turf.

## 22. General

- 22.1 The failure by Expert Turf to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Expert Turf's right to subsequently enforce that provision. 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Plymouth in New Zealand.
- 22.3 Expert Turf 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 Expert Turf of these terms and conditions (alternatively Expert Turf's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 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 Expert Turf nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 Expert Turf may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.6 The Client agrees that Expert Turf may amend these terms and conditions at any time. If Expert Turf makes a change to these terms and conditions, then that change will take effect from the date on which Expert Turf notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Expert Turf to provide Goods to the Client.
- 22.7 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.
- 22.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.