



TERMS OF TRADE

1. DEFINITIONS

- 1.1 "Application" means the application for the supply of Products on credit attached to these terms of trade.
- 1.2 "Contract" means the contract formed upon execution of the Application by the Customer.
- 1.3 "Contract Price" means the price charged by Greenscapes for Products and Services to the Customer, or such other price as is agreed between the parties.
- 1.4 "Customer" means the party named as such in the Application.
- 1.5 "Greenscapes" means Greenscape Landscape and Garden Supplies Limited, a duly incorporated company having its registered office at Cambridge, New Zealand.
- 1.6 "Products" means all products (primarily expected to motor vehicle parts) to be supplied by Greenscapes to the Customer.
- 1.7 "Services" means mechanical services provided by Greenscapes to the Customer.

2. REQUEST FOR SERVICES/PRODUCTS

- 2.1 The Customer will request Services (which may or may not involve the supply of Products) from time to time.
- 2.2 Greenscapes will, where possible, provide an estimate of the likely cost of the Services (and Products if any) prior to commencing the Services. Failure by Greenscapes to provide an estimate will not reduce the Customer's obligation to pay for the Services (and Products if any) supplied by Greenscapes.

3. PAYMENT AND CREDIT LIMIT

- 3.1 Unless otherwise agreed in writing, payment shall be on the 20th day of the month following the date of invoice.
- 3.2 The Customer must make payment of each invoice in full without deduction, set off or claim.
- 3.3 Greenscapes reserves the right to charge interest for late payment, in which case interest shall be payable at the rate of 2% per month on amounts outstanding.
- 3.4 Greenscapes shall be entitled to apply any monies received from the Customer against amounts owed by the Customer to Greenscapes in any way Greenscapes sees fit.
- 3.5 Greenscapes will monitor the amount of credit the Customer has incurred and reserves the right at any time to cease providing Services/Products to the Customer until the amount outstanding has been decreased to a level acceptable to Greenscapes.
- 3.6 Greenscapes reserves the full discretion to cease providing Services/Products on credit to the Customer at any time at which point, the Customer will be required to pay for Services/Products prior to taking delivery of the vehicle that an invoice relates to. Greenscapes will provide written notice of termination of the Customer's credit in that event.
- 3.7 For the avoidance of any doubt, the Customer acknowledges and accepts that Greenscapes has a lien over any vehicle delivered to Greenscapes until the invoice for the Services/Products supplied for that vehicle have been paid in full.

4. DELIVERY, TITLE & RISK

- 4.1 Unless otherwise stated in writing, all times quoted for completion of Service and supply of Products are estimates only and Greenscapes shall not be liable for any loss or damage direct or consequential arising from failure to complete the Services on an anticipated or estimated date.
- 4.2 The Customer shall not be relieved of any obligation to accept or pay for Services/Products by reason of any delay in supply or performance by Greenscapes.
- 4.3 Greenscapes shall not be responsible to the Customer for delay or failure in performance of any of the obligations imposed by this Contract, provided such delay or failure has been occasioned by fire, flood, hail, explosion, lightning, windstorm, earthquake, subsidence of soil, failure of machinery or equipment or supply of material, discontinuity in the supply of power, court order, riot, war, strikes, labour disturbances or by any other cause in any such case beyond the reasonable control of Greenscapes.
- 4.4 Title in all Products supplied by Greenscapes to the Customer shall not pass to the Customer until the Customer has paid in full for those Products. Greenscapes shall be entitled to enter any premises owned or occupied by the Customer (and the Customer grants Greenscapes a limited licence to enter in that respect) and reclaim possession of the Products without liability to the Customer for any damage caused to the Customer's property. This clause shall entitle Greenscapes to register a specific security interest under the Personal Property Securities Act 1999 to protect its title in the Products. The Customer waives its right to receive a verification statement of any financing statement registered by Greenscapes under this clause.

5. INTELLECTUAL PROPERTY

All intellectual property (such as patentable inventions, non-patentable processes or know-how, data, design, copyright, trade marks and the like) held by Greenscapes at the commencement of the Contract or created by Greenscapes as a result of the Contract shall belong to Greenscapes, unless otherwise agreed in writing between the parties.

6. PERFORMANCE

- 6.1 All figures or data supplied by Greenscapes with respect to performance are intended to be bona fide reasonable estimates of all the performance which would be expected of the Services/Products. Except where performance figures are specifically guaranteed in writing by Greenscapes to be within stated tolerances, Greenscapes accepts no responsibility for failure of any Services/Product to meet stated performance figures and any statement as to performance figures whether in writing or otherwise shall not constitute a condition, warranty or representation.
- 6.2 In the event that Greenscapes has specifically guaranteed performance figures, the Customer shall ensure that Greenscapes is given all reasonable time and opportunity to make such modifications or adjustments as it considers necessary to ensure that the Service/Product complies with the performance warranty. Greenscapes will not be in breach of any warranty as to performance until it shall have been given all reasonable time and opportunity to complete the requisite modifications.

7. LIABILITY

- 7.1 Greenscapes shall not be liable (whether in contract, tort, including negligence, or otherwise) to the Customer for any loss or damage (including but not limited to direct, indirect or consequential loss or damage) arising from the Contract. For the purposes of this clause "indirect or consequential loss or damage" includes loss or reduction of business or profits.
- 7.2 Without prejudice to clause 7.1, unless otherwise agreed in writing by Greenscapes, the total aggregate liability (whether in contract, tort, including negligence, or otherwise) of Greenscapes for any breach of or other matter arising in relation to the Contract shall not exceed the Contract Price.
- 7.3 If, in relation to a specific order placed by the Customer, Greenscapes acknowledges in writing that it may accept liability for losses that extend beyond the accept liability set out in this clause 7, such liability will at all times be limited to the extent of Greenscapes insurance coverage for such liability.
- 7.4 The Customer agrees that where the Contract involves the supply of services or goods of a kind ordinarily acquired for personal, domestic, household use or consumption, it is acquiring those services and/or goods for the purposes of a business and the provisions of the Consumer Guarantees Act 1993 shall not apply to those services or goods or the Contract or these standard terms and conditions of contract.
- 7.5 The conditions and warranties implied by the Sale of Goods Act 1908 or by common law or otherwise are expressly excluded.

8. INDEMNITY

The Customer shall indemnify Greenscapes and keep Greenscapes fully and effectively indemnified against all losses, claims, damages, costs (including costs on a lawyer to client basis), charges, expenses, liabilities, demands, proceedings, and actions which Greenscapes may sustain or incur or which may be brought or established against it by any person and in any case which arise out of or in relation to the performance by Greenscapes of the Services or supply of the Products, or by reason of any breach by the Customer of any of its obligations under the Contract or any other act or omission of the Customer whether or not by reason of any Act, regulation, common law rule, or in equity or otherwise and whether for damages or for other relief.

9. ADDITIONAL COST

In the event of Greenscapes incurring additional cost by reason of the Customer failing to give Greenscapes sufficient instructions pertaining to the Contract or delivery of the Services/Products the Contract Price may be increased at the option of Greenscapes.

10. GENERAL

- 10.1 The benefit of the Contract may be assigned by Greenscapes at any time to any party without requiring the Customer's consent. Upon the Customer receiving notice from Greenscapes that the benefit of the Contract has been assigned, the Customer will comply with and honour the terms of the Contract with respect to that third party assignee.
- 10.2 The Contract shall be deemed to have been entered into in New Zealand and shall be governed by the laws of New Zealand.
- 10.3 Any dispute between the parties which has not been settled by full and frank discussion may (after giving thirty days notice) be referred by either party to arbitration in accordance with the provisions of the Arbitration Act 1996 by an arbitrator appointed by the President for the time being of the New Zealand Law Society. Judgment on the award rendered may be entered in any Court having jurisdiction.
- 10.4 Any waiver by Greenscapes of any rights arising from the Contract shall not be construed as a continuing waiver or a waiver of other breaches of the same or other terms of the Contract by Customer. No delay or forbearance by Greenscapes shall be construed as a waiver of Greenscapes rights.
- 10.5 Nothing in the Contract shall create a partnership or agency between the parties except as expressly provided.
- 10.6 The Contract sets out the entire agreement and understanding between the parties relating to the subject matter. Greenscapes may make modifications or amendments to the Contract terms and conditions by posting a copy of the amendments to the Customer. Any request for Products after the amendments have been disclosed will be undertaken on the amended terms.
- 10.7 Nothing in the Contract shall prevent Greenscapes from providing the same or similar services to any other party.
- 10.8 The Customer warrants that it will be required to comply with Greenscapes policies under the Health and Safety at Work Act 2015. Greenscapes reserves the right to refuse entry to its workshop if the Customer (or an employee of the Customer) refuses to comply with Health and Safety policies.

11. GUARANTEE

- 11.1 If a Guarantor is included in the Application, the Guarantor acknowledges and agrees that in consideration for Greenscapes entering into the Contract at the Guarantor's request, the Guarantor:
- (a) guarantees the Customer's performance of the Customer's obligations in this Contract; and
 - (b) indemnifies Greenscapes against any actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind which Greenscapes may suffer or incur as a result of the Customer's breach of any of the Customer's covenants in the Contract.
- 11.2 The Guarantor's liability under the guarantee and indemnity contained in clause 11.1 is not affected by:
- (a) the granting of time or other indulgence to Greenscapes;
 - (b) the compounding, compromise, release, abandonment, waiver, variation or renewal of any of Greenscapes rights against the Customer;
 - (c) Greenscapes failure to enforce Greenscapes rights against the Customer; or
 - (d) any other thing which under the law on sureties would or might, if not for this clause, wholly or partly release the Guarantor from the Guarantor's obligations under clause 11.1.
- 11.3 Greenscapes does not have to take proceedings against the Customer before taking proceedings against the Guarantor.