

BAY SWEEP & SCRUB (2016) LTD TERMS AND CONDITIONS OF TRADE

These are the Terms of Trade between BSSL and the Customer

1. Definitions

- 1.1 "Supplier" means BSSL, its successors and assigns or any person acting on behalf of and with the authority of BSSL.
- 1.2 "Customer" means the person/s requesting BSSL to provide and Services as specified in any invoice, document or order, and if there is more than one Customer requesting the Services is a reference to each person jointly and severally.
- 1.3 "Incidental Items" means any goods, documents or materials supplied, consumed or deposited incidentally by BSSL in the course of it conducting or supplying to the Customer any Services.
- 1.4 "Services" means all Services supplied by BSSL to the Customer at the Customer's request from time to time.
- 1.5 "Price" means the price payable for the Services as agreed between BSSL and the Customer in accordance with clause 4 of this contract.

2. Acceptance

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

3. Change in Control

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

4. Price and Payment

- 4.1 At BSSL's sole discretion the Price shall be either;
 - (a) as indicated on any invoice provided by BSSL to the Customer; or
 - (b) BSSL's estimated or quoted price (subject to clause 4.2) which will be valid for the period stated in the estimate or quote or otherwise for a period of thirty (30) days.
- 4.2 BSSL reserves the right to change the Price if a variation to BSSL's estimate, or quotation arises, or where upon inspection, BSSL believe the Customer has underestimated the services that it is to perform any variation from the plan of scheduled works or specifications (including, but not limited to any variation as a result of additional works required after an inspection due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, extra treatment or procedures required for bio-hazardous materials/products or other particular stain removal or as a result of any increase to BSSL in the cost of materials and/or labour) will be charged to the Customer on the basis of BSSL's estimate or quote and will be shown as variations on the invoice. Payment for all variations must be made in full at the time of completion.
- 4.3 BSSL's may at its sole discretion require payment of a deposit prior to any work commencing.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by BSSL which may be:
 - (a) on delivery of the Services; or
 - (b) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is emailed/posted to the Customer's address or address for notices; or
 - (c) the date specified on any invoice or other form (including but not limited to, any variation of invoice, or estimate) 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 Customer by BSSL.
- 4.5 Payment may be made by online banking, bank cheque or cheque.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to BSSL an amount equal to any GST BSSL must pay for any supply by Bay Sweep & Scrub Ltd under this or any other agreement for BSSL Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.

5. Delivery of Services

- 5.1 BSSL Delivery of the Services shall take place when the Services are supplied to the Customer at the Customer's nominated address.
- 5.2 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.3 Any time or date given by BSSL to the Customer is an estimate only and is subject to availability of BSSL. The Customer must still accept delivery of the Services even if late and BSSL will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

- 6.1 The Customer acknowledges that in some instances repeated applications may be required for stain removal but may not always be successful. Although BSSL shall take all due care, some residual fading of surfaces/porous

surfaces may result from such repeated spot treatments. BSSL's liability in respect of the provision of Services is limited at all times in accordance with clause 18.3.

7. Access

- 7.1 The Customer shall ensure that BSSL has clear and free and unobstructed access at all times to the work site at all times to enable them to undertake the Services. BSSL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, covered surfaces, floors or wall linings) unless due to any negligence of BSSL.

8. Personal Property Securities Act 1999 ("PPSA")

8. Upon assenting to these terms and conditions as evidenced by the Customer's signature on the Company's credit application form, or quotation form, or electronic acceptance of the Company's quotation in writing the Customer 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 Services and Incidentals previously supplied by BSSL to the Customer (if any) and all Services and Incidentals that will be supplied in the future by BSSL to the Customer;
- 8.2 The Customer 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 BSSL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify and upon demand reimburse BSSL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Security Register;
 - (c) not register a financing change statement or a change in demand without the prior written consent of BSSL.
- 8.3 BSSL and the Customer agree that nothing in sections 114(10(a), 133 and 134 of the PPSA shall apply to these terms and conditions;
- 8.4 The Customer waives its rights as a debtor under sections 115, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA;
- 8.5 Unless otherwise agreed to in writing by BSSL the Customer waives its rights to receive a verification statement in accordance with section 148 of the PPSA;
- 8.6 The Customer shall unconditionally ratify any actions taken by BSSL under this clause.

9. Security and Charge

- 9.1 In consideration of BSSL agreeing to supply Services, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money);
- 9.2 The Customer indemnifies BSSL from and against all BSSL's rights under this clause;
- 9.3 The Customer irrevocably appoints BSSL and each director of BSSL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9.3 including, but not limited to, signing any document on the Customer's behalf.

10. Customer's Disclaimer

- 10.1 The Customer hereby disclaims any right to rescind, or cancel any contract with BSSL or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by BSSL and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgement.

11. Errors and Omissions/Defects

- 11.1 Subject to 6.1 herein, the Customer shall inspect the Service/s once completed and shall within five (5) days of completion notify BSSL of any alleged defect or failure to comply with the description or quote. The Customer shall afford BSSL an opportunity to inspect the Service/s within a reasonable time following completion if the Customer believes the Service/s are defective in any way. If the Customer shall fail to comply with these provisions, the Service/s shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect.
- 11.2 For defective Services, which BSSL has agreed in writing that the Customer is entitled to reject, BSSL's liability is limited to either (at BSSL's discretion) redoing the Service/s or rectifying the Services provided that the Customer has complied with the provisions of clause 11.1.

12. Consumer Guarantees Act 1993

- 12.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by BSSL to the Customer.

13. Intellectual Property

- 13.1 Where BSSL has designed, drawn or developed Incidental Items/Equipment for the Customer, then the copyright in any Incidental Items shall remain the property of BSSL.

14. Default and Consequences of Default

- 14.1 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 BSSL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- 14.2 If the Customer owes BSSL any money the Customer shall indemnify BSSL from and against all costs and disbursements incurred by BSSL in recovering the debt (including but not limited to internal administration

- fees, legal costs on a solicitor and own Customer basis, BSSL's collection agency costs and bank dishonour fees).
- 14.3 Without prejudice to any other remedies BSSL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions BSSL may suspend or terminate the supply of Services to the Customer. BSSL will not be liable to the Customer for any loss or damage the Customer suffers because BSSL has exercised its rights under this clause.
- 14.4 Without prejudice to BSSL's other remedies at law BSSL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to BSSL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to BSSL becomes overdue or in BSSL's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into any 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 Customer or any asset of the Customer.
- 15. Cancellation**
- 15.1 BSSL may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice BSSL shall repay to the Customer any money paid by the Customer for the Services. BSSL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels its order of the Service the Customer shall be liable for any and all loss incurred (whether direct or indirect) by BSSL as a direct result of the cancellation (including but not limited to, any loss of profit's).
- 16. Personal Guarantee of Company Directors or Trustees**
- 16.1 If the Customer is a company or trust, the director(s) or trustee(s) engaging BSSL's Services (or the credit application form (as applicable)), also sign in their personal capacity, and jointly and severally personally undertake as principal debtors to BSSL the payment of any and all monies now or hereafter owed by the Customer to BSSL and further agree to indemnify it against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in any agreement or credit application made with the Customer. The signatories and the Customer shall remain jointly and severally liable under the terms and conditions of any Service agreement and for payment of all sums due thereunder.
- 17. Privacy Act 1993**
- 17.1 The Customer authorises BSSL to:
- (a) access, collect, retain and use any information about the Customer:
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's credit worthiness; or
 - (ii) for the purpose of marketing products and services to the Customers.
 - (b) disclose information about the Customer whether collected by BSSL from the Customer directly or obtained by BSSL 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 Customer.
- 17.2 Where the Customer is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Customer shall have the right to request BSSL for a copy of the information about the Customer retained by BSSL and the right to request BSSL to correct any information about the Customer held by BSSL.
- 18. General**
- 18.1 The failure by BSSL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect BSSL'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.
- 18.2 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 Zealand.
- 18.3 BSSL shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by BSSL of these terms and conditions (alternatively BSSL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 18.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by BSSL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 BSSL may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 18.6 The Customer agrees that BSSL may amend these terms and conditions at any time. If BSSL makes a change to these terms and conditions, then that change will take effect from the date on which BSSL notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for BSSL to provide Services to the customer.
- 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, earthquake or other event beyond the reasonable control of either party.

- 18.8 The Customer 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.