

1. DEFINITIONS

- 1.1 "FPM" means FPM, its successors and assigns or any person acting on behalf of and with the authority of FPM.
- 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 "Work" means all "Goods" or "Services" supplied by FPM to the Client at the Client's request from time to time (where the context requires the terms 'Goods' or 'Services' shall be interchangeable).
- 1.4 "Price" means the Price payable for the Work as agreed between FPM and the Client in accordance with clause 2 below.

2. PRICE AND PAYMENT

- 2.1 The Price shall be as indicated on invoices provided by FPM to the Client in respect of the Work supplied.
- 2.2 Time for payment for the Work shall be of the essence and the Client must pay the Price as stated and within the time on the invoice, quotation, or any other order forms. If no time is stated then the Client must pay the Price immediately upon completion of the Work. If the Work occurs across more than one calendar month, FPM may invoice monthly for Work to date.
- 2.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to FPM an amount equal to any GST FPM must pay for any supply by FPM 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.
- 2.4 Where FPM provides a quotation it will be valid for 30 days or until withdrawn by FPM whichever is earlier.

3. RISK AND VARIATIONS

- 3.1 Risk of damage to or loss of the Work passes to the Client on completion and the Client must insure the Work on or before completion.
- 3.2 If any of the Work are damaged or destroyed following completion but prior to ownership passing to the Client, FPM is entitled to receive all insurance proceeds payable for the Work. The production of these terms and conditions by FPM is sufficient evidence of FPM rights to receive the insurance proceeds without the need for any person dealing with FPM to make further enquiries.
- 3.3 FPM will endeavour to provide the Work within the schedule in any quotation however it will not be liable in any way for any delay or failure to provide the Work. The Client acknowledges that the Work may not be carried out on consecutive days. The Client will provide access to the Work site on weekends and public holidays if FPM requires.
- 3.4 FPM offers no warranties on any products and services. Any warranties will be from the manufacturer or supplier. Warranty concerns must be addressed by the Client.
- 3.5 FPM hold no responsibility for damage to underground services while working on any site/project it is the responsibility of the client to identify and ensure correct depths of services have been met and that no damage will occur during operations.
- 3.6 FPM cannot guarantee the quality of concrete finish once the stone has been exposed during the washing process, we cannot guarantee the consistency of the stone in the concrete once exposed nor can we guarantee that the concrete wont crack.
- 3.7 Where underground or hidden conditions such as rocks or other obstacles require additional time or equipment to complete the Work, FPM may reasonably increase the Price to allow for the additional work related to such conditions. In no case will FPM be liable for any damages to services or public assets where the Client has not specifically notified FPM of the same. Unless set out in the quotation, the Client is responsible for all approvals and permits in relation to the Works and will indemnify FPM against any claim, loss or damage in any way related to such approvals or permits.
- 3.8 Should the Client wish to vary the Work which has been quoted, FPM may charge the Client for such variation at its usual rates. FPM will endeavour to provide an estimate for variations however failure to provide an estimate will not affect the Clients obligation to pay for the variations and additions in addition to the Price. Variations and additions to quoted Work will be provided at FPM's sole discretion. Where a variation reduces the Work, FPM's calculation of any reduction will be at its discretion and any amount reasonably calculated deemed a final adjustment. The Client must provide any variation in writing however FPM may charge for any verbal variation that it undertakes.
- 3.9 The Client will be liable for payment for all plants that have left the nursery and no changes or refunds are allowed.
- 3.10 FPM will endeavour to provide healthy plants. The Client acknowledges that live plants may die or spread disease between other plants as the site is out of the control of FPM. The Client indemnifies FPM against any claim, loss or damage in any way related to any risk associated with live plants. The Client is liable for any redelivery or replanting costs should plants require replacement.

4. TITLE TO WORK

- 4.1 FPM and the Client agree that ownership of the Work shall not pass until:
 - (a) the Client has paid FPM all amounts owing to FPM; and
 - (b) the Client has met all of its other obligations to FPM.
- 4.2 Receipt by FPM 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.
- 4.3 It is further agreed that:
 - (a) until ownership of the Work passes to the Client in accordance with clause 4.1 that the Client is only a bailee of the Goods and must return the Goods to FPM on request.
 - (b) the Client holds the benefit of the Client's insurance of the Work on trust for FPM and must pay to FPM the proceeds of any insurance in the event of the Work being lost, damaged or destroyed.

- (c) the Client irrevocably authorises FPM to enter any premises where FPM believes the goods forming part of the Work are kept and recover possession of any Goods.
- (d) the Client shall not charge or grant an encumbrance over the Work nor grant nor otherwise give away any interest in the Work while they remain the property of FPM.
- (e) FPM may commence proceedings to recover the Price of the Work sold notwithstanding that ownership of the Work has not passed to the Client.
- (f) FPM has the right to enter any private or public property to remove any Goods, equipment, materials or belongings without charge.

5. PERSONAL PROPERTY SECURITIES ACT (PPSA)

- 5.1 The Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Work that have previously been supplied and that will be supplied in the future by FPM to the Client together with a general security interest in all of the Client's present and after acquired property.

6. SECURITY AND CANCELLATION

- 6.1 In consideration of FPM agreeing to supply the Work, 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).
- 6.2 The Client indemnifies FPM from and against all FPM' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising FPM rights under this clause.
- 6.3 The Client irrevocably appoints FPM and each director of FPM as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 6 including, but not limited to, signing any document on the Client's behalf.
- 6.4 Upon paying the Deposit the Client will forfeit:
- (a) 100% of the deposit made to FPM if the Work is cancelled within 14 Days of the proposed commencement date;
 - (b) 50% of the deposit if Work is cancelled between 14 to 21 days of the proposed commencement date; and
 - (c) 25% of the deposit if Work is cancelled between 21 to 28 Days, of the proposed commencement date.
- A full refund will be made if the Client cancels the Work 28 days or more prior to the proposed commencement date and provided that no billable hours or materials have been purchased or charged. In each case any costs or liabilities that FPM may have incurred which are not recoverable shall be deducted from the Deposit prior to its return.
- 6.5 FPM have the right to charge for items not specifically listed on the quote to cover our operational cost where a job may have started and been cancelled with due notice or where behind the scenes work has been carried out.
- 6.6 FPM terms and conditions overrule any terms or conditions set out in any contract agreements with other parties, where you payment terms exceed ours you will be charged overdue fees.

7. DEFAULT AND CONSEQUENCES OF DEFAULT

- 7.1 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 FPM' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2 If the Client owes FPM any money the Client shall indemnify FPM from and against all costs and disbursements incurred by FPM in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, FPM' Contract default fee, and bank dishonour fees).
- 7.3 FPM may cancel the Work at any time if the Client:
- (a) fails to pay the Price in accordance with these terms;
 - (b) faces an insolvency event;
 - (c) repudiates or threatens to repudiate the agreement; or
 - (d) breaches these terms in a manner that is unable to be remedied.

8. PRIVACY ACT 1988

- 8.1 The Client agrees for FPM to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by FPM.
- 8.2 The Client agrees that FPM may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report.
- 8.3 FPM may give information, which may include personal particulars, about the Client to obtain a consumer credit report about the Client.

9. GENERAL

- 9.1 The failure by FPM to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision. If any provision of these terms and conditions shall be invalid or unenforceable the validity and enforceability of the remaining provisions shall not be affected.
- 9.2 These terms and conditions and any contract to which they apply shall be governed by and are subject to the laws of the state of Western Australia.
- 9.3 FPM shall be under no liability whatsoever to the Client for any indirect or consequential loss or expense (including loss of profit) suffered by the Client arising out of a breach by FPM of these terms and conditions. FPM's liability shall be limited to damages which under no circumstances shall exceed the Price of the Work FPM has actually received.
- 9.4 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 FPM nor to withhold payment of any invoice because part of that invoice is in dispute.