



ESICON PTY LTD TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. The Contractor is Esicon Pty Ltd (A.C.N. 615 288 885) of 4 Capes Court, Mill Park VIC 3082.
- 1.2. Any reference to "the Customer" includes any person engaging the Contractor on behalf of and with the authority of the Customer that the Order is provided for.
- 1.3. The Order shall be defined as any request for the provision of Services by the Customer to the Contractor which has been accepted by the Contractor.
- 1.4. The Services provided are cleaning services, including any advice or recommendations given.
- 1.5. The Goods are the parts, components and materials provided by the Contractor and used up by the Contractor in performing the Services.
- 1.6. The Site is the land or land and buildings where the Services are to be carried out, or which are the subject of the Services to be performed.
- 1.7. Reference to loss and damage includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.8. Any reference to "the SOP Act" refers to the *Building and Construction Industry Security of Payment Act 2002 (Vic)*.
- 1.9. Major failure is as defined under the *Competition and Consumer Act 2010 (Cth)*.
- 1.10. GST refers to Goods and Services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. GENERAL

- 2.1. These terms and conditions together with the Contractor's quotation, dockets, credit application form and the Customer's work or purchase order document (if any) constitutes the agreement between the Contractor and the Customer ("**the agreement**").
- 2.2. Any Order is deemed to incorporate these terms and conditions; which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.5. Where more than one Customer completes this agreement each shall be liable jointly and severally.
- 2.6. 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 and the offending provision shall be deemed as severed from these terms and conditions.
- 2.7. The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Contractor acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.

- 2.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.9. The Customer acknowledges that the Contractor may detail these terms and conditions on its website. In this event, the terms and conditions on the Contractor's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

3. QUOTATIONS AND PLACEMENT OF ORDERS

- 3.1. Any quotation given by the Contractor will expire after seven (7) days.
- 3.2. A written quotation from the Contractor will include a scope of works detailing the specific Services to be performed by the Contractor.
- 3.3. The Contractor does not represent that it will provide any Services unless it is included in the quotation.
- 3.4. A request for Services may be placed by the Customer with the Contractor either verbally or in writing however the Contractor may require the Customer to provide a work or purchase order document prior to providing any Services.
- 3.5. As a condition of acceptance the Contractor may require the payment of a deposit in respect of the Price and/or payment of the Price by interim or progress payments made at specified intervals or stages in the completion of the Services. If a deposit is required the Contractor may not be deemed to have accepted the Customer's request for Services unless or until such deposit has been paid.
- 3.6. The Contractor may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the quotation given or in the Customer's Order. In this event, the Contractor shall be entitled to make an additional charge. Additional Services include, but is not limited to additions alterations or amendments to the quote or scope of works ("**a variation**").
- 3.7. All prices are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Contractor.

4. PRICE

- 4.1. GST will be charged on the Services provided by the Contractor that attract GST at the applicable rate.
- 4.2. The Contractor reserves the right to change the Price in the event of a variation. Notice will be provided in writing by the Contractor within a reasonable time.
- 4.3. At the Contractor's sole discretion the Price shall be either:
 - 4.3.1. The Contractor's quoted Price for the Order (subject to clause 5.2); or
 - 4.3.2. As detailed on invoices provided by the Contractor to the Customer in respect of Services supplied.

5. PROVISION OF THE SERVICES

- 5.1. The Contractor reserves its right to:
 - 5.1.1. Decline requests for any Services made by the Customer.
 - 5.1.2. Cancel or postpone appointments at its discretion.
- 5.2. Unless specified by the Contractor to the contrary in the Order or quotation, the Contractor does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of the agreement.

- 5.3. Subject to otherwise complying with its obligations under the agreement, the Contractor shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 5.4. The Customer grants full access to the Contractor and its servants and agents to the Site and shall ensure a supply of water and/or electricity (at no cost) to enable the Contractor to carry out the Services.
- 5.5. The Customer warrants that it is acting with the express authority of the owner of the Site, and the Customer indemnifies and will continue to indemnify the Contractor in respect of this warranty including any claims for loss and damage by the owner of the Site against the Contractor.
- 5.6. The Customer is responsible for obtaining all necessary permits and to mark out the site at the Site for the provision of the Services.

6. PAYMENT AND CREDIT POLICY

- 6.1. The issuing of an invoice for an interim or progress payment by the Contractor for the Services that the Contractor is entitled to make pursuant to the agreement constitutes a payment claim pursuant to the SOP Act.
- 6.2. The Customer must pay any invoice rendered by the Contractor in respect of the services provided within thirty (30) days from the date of issue of the invoice, unless otherwise specified or agreed between the parties in writing.

Credit

- 6.3. Credit terms will only be granted at the sole discretion of the Contractor and upon submission of a completed credit application form.
- 6.4. On the acceptance by the Contractor of a completed credit application form, The Customer must pay any invoice rendered by the Contractor in respect of the services provided within thirty (30) days of the date of issue of the invoice, unless otherwise specified in the credit application form or agreed between the parties in writing.
- 6.5. Any credit, or credit limit granted by the Contractor may be revised by the Contractor at any time and at its discretion.
- 6.6. The Contractor reserves the right to withdraw any credit facility upon any breach by the Customer of these terms and conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 6.7. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

Privacy

- 6.8. When providing a completed credit application form the Customer agrees:
 - 6.8.1. For the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Contractor.
 - 6.8.2. That the Contractor may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
 - 6.8.3. The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

7. DEFAULT

- 7.1. In this clause the “**default date**” is the day after the date by which payment of the Contractor’s invoice was due to be made by the Customer to the Contractor and the “**outstanding balance**” is the balance due on the sum of the Contractor’s invoice(s) on the default date after accounting for any payments made by the Customer in respect of the invoice(s).
- 7.2. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Contractor’s bank.
- 7.3. If the Contractor does not receive the outstanding balance by the default date the Customer will be liable for:
- 7.3.1. Interest on the outstanding balance from the default date at the rate of thirty-six per centum (36%) per annum calculated on a daily basis;
- 7.3.2. An account keeping fee of \$30.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
- 7.3.3. Any debt collection or recovery costs incurred by the Contractor; and if the Contractor’s debt collection agency (“**the agency**”) charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Contractor to the agency, at the agency’s prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:

$$\frac{\text{Total Debt including Commission and GST}}{100 - \text{Commission \% charged by the agency (including GST)}} \times 100 = \text{Original Debt}$$

(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au).

- 7.3.4. Any charges reasonably made or claimed by the Contractor’s or the agency’s lawyer for legal costs on the indemnity basis.

8. RISK AND LIABILITY

- 8.1. The Customer will ensure when placing Orders that there is sufficient information and specifications to enable the Contractor to execute the Order, including, but not limited to advising or providing plans detailing any concealed easements, pipes or wiring and the like to the Contractor.
- 8.2. The Contractor takes no responsibility if the specifications provided by the Customer are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Contractor for any work required to rectify the Order.
- 8.3. The Customer acknowledges that the Contractor shall not be liable for and the Customer releases the Contractor from any loss and damage incurred as a result of delay or failure to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Contractor’s reasonable control.
- 8.4. The Customer warrants that the Site is in a safe condition for the Contractor’s servants and agents to perform the Services, and the Customer indemnifies and agrees to keep the Contractor indemnified against any and all claims for personal injury and loss and damage arising from or in connection with failing to keep the Site safe to work in, including but not limited to injury caused by any feature or condition of the Site, whether or not any such feature or condition is reasonably obvious and whether or not the feature or condition is known to the Customer.
- 8.5. The Customer is responsible for ensuring that the Goods and any tools or equipment of the Contractor are secured at the Site and warrants to be responsible for any loss and damage to or theft of the Goods and tools or equipment at the Site.
- 8.6. Subject to the Contractor’s warranty for defective services, the Contractor’s liability for any loss and damage associated with, arising from or in connection with the Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

9. WARRANTY

- 9.1. The Contractor warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 9.2. The Contractor does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of *the Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.

Warranty for Services

- 9.3. Provided that the Customer reports any defect in any Service provided, preferably within fourteen (14) days from the date that the defect became apparent, the Contractor will rectify any defect in the Services within a reasonable period of time.
- 9.4. In respect of all claims under warranty, the Contractor reserves its right to inspect the Services alleged to be defective.
- 9.5. To the extent permitted by law the Contractor's liability in respect of defective services that does not constitute a major failure will be limited to:
 - 9.5.1. The rectification by the Contractor of the defective Service; or
 - 9.5.2. The payment of the reasonable costs of having the Services rectified or supplied again; or
 - 9.5.3. The refund of the Price paid by the Customer in respect of the defective Service.
- 9.6. The Contractor shall not be liable to compensate the Customer for any reasonable delay in remedying any defective Services or in assessing the Customer's claim.
- 9.7. The Customer warrants that it will use its best endeavours to assist the Contractor with identifying the nature of the defective Service claim.

Claims made under Warranty

- 9.8. Claims for warranty should be made in one of the following ways:
 - 9.8.1. The Customer must send the claim in writing to the Contractor's address 4 Capes Court, Mill Park VIC 3082.
 - 9.8.2. The Customer must email the claim to the Contractor to admin@esicon.com.au.
 - 9.8.3. The Customer must contact the Contractor on the Contractor's business number (03) 1300 932 532.

10. TERMINATION AND CANCELLATION

Cancellation by Contractor

- 10.1. The Contractor may cancel any Order to which these terms and conditions apply by providing no less than forty-eight (48) hours' notice to the Customer before the services were due to commence. On giving such notice the Contractor shall repay to the Customer any deposit or other sum advanced in respect of the Price. The Contractor shall not be liable for any loss and damage whatsoever arising from such cancellation.
- 10.2. Without prejudice to the Contractor's other remedies at law, the Contractor shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
 - 10.2.1. Any money payable to the Contractor including any interim or progress payment becomes overdue for payment; or
 - 10.2.2. The Customer 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
 - 10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by the Customer

- 10.3. The Customer may cancel any Order by providing no less than forty-eight (48) hours' notice to the Contractor before the Services were due to commence.
- 10.4. In the event that the Customer cancels the Order outside of the requisite notice period, the Customer shall be liable for loss and damage suffered by the Contractor; but limited to:
 - 10.4.1. The Price of the Order; or
 - 10.4.2. Any costs or expenses incurred by the Contractor; including the cost of purchasing the Goods from a third party to meet the Customer's Order.
- 10.5. The Contractor may retain any deposit or other sum paid by the Customer in respect of the Price of the Order and offset such sum or deposit in satisfaction or partial satisfaction of any loss and damage suffered by the Contractor as a result of the Customer's cancellation of the Order.

11. CONDITIONS OF QUOTATION:

- 11.1. The quotation provided alongside this agreement is based on the condition that:
 - 11.1.1. Rubbish removal will only be performed if an external bin is present, and will involve the removal of rubbish to the external bin only.
 - 11.1.2. Construction and related works will not occur at the area/areas where our services are to be performed for the entirety of its duration.
 - 11.1.3. The builder warrants that its personnel and contractors will not interfere with the execution of our services.

12. ENTIRE AGREEMENT

- 12.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Contractor.
- 12.2. The agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 12.3. All prior discussions and negotiations are merged within this document and the Contractor expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 12.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* or the *Fair Trading Acts* in each of the States and Territories of Australia.