



## DORMER SOIL SAMPLERS Terms and Conditions of Sale

### 1.1 Definitions

In these Terms and Conditions of Sale.

"Customer" means the customer named in the order.

"Goods" means the goods set out in the order.

"Order" means the written document submitted by the Customer to the Supplier requesting that Dormer Soil Samplers supply Goods to the Customer on these Terms and Conditions of Sale.

"Price" means the price of the Goods set out in the Supplier's price list as notified to the Customer from time to time or as otherwise agreed by the Supplier

"Special Products" means products manufactured by the Supplier to meet the Customer's particular specifications as set out in the Order.

"Supplier" means Dormer Soil Samplers or a related body corporate named as the supplier.

"Dormer Soil Samplers" means Ryannette Pty Limited trading as Dormer Engineering ABN 87 002 849 336 of 4 Mayfield St, Murwillumbah, NSW, 2484.

### 1.2 Supply of Goods

We, the Supplier, will supply to you, the Customer, the Goods on these Terms and Conditions of Sale.

### 1.3 Orders

- (a) You must submit an Order for supply of Goods. This Agreement commences on the date we supply the Goods to you.
- (b) Any quotation we make to you shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only. We reserve the right to accept or reject in our absolute discretion any Order which we may receive from you.

### 1.4 Delivery

- (a) Any times we quote for delivery of Goods to you, are estimates only and we shall not be liable for failure to deliver or for delay in delivery arising from any cause whatsoever beyond our control. You shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery or dispatch.
- (b) Any delivery attempted and caused to be aborted due to an incorrect delivery address given or a change of address not being correctly notified or no-one authorized to receive the goods being in attendance shall be at the receivers additional cost.

### 1.5 Payment Obligations

- (a) You must pay us the Price for the Goods in accordance with this clause.
- (b) All payments for Goods which we supply must be made to Dormer Soil Samplers.
- (c) Unless you have a Credit Account with Dormer Soil Samplers or we otherwise agree in writing, you must pay the Price for Goods immediately upon delivery of the Goods. If you hold a Credit Account with Dormer Soil Samplers, you must pay for Goods 30 days after the end of the month of the date on the invoice or the date the Supply of Goods was made, whichever is earliest.
- (d) All payments are to be made in cash, by cheque or EFT or otherwise agreed to by us in writing.
- (e) If you tender a cheque (bank or otherwise) or other negotiable instrument as payment of our invoice, payment shall be deemed to have been made on the date on which such cheque or other negotiable instrument is negotiated and cleared by Dormer Soil Samplers' bankers.

### 1.6 Risk and Title

- (a) You will obtain title to any Goods which we supply when you pay:
  - (i) the full Price for those Goods; and
  - (ii) any other moneys which you may owe to us.
- (b) Although title to the Goods remains with us until time of payment, risk in the Goods passes to you at time of delivery to you, your agent or to a carrier commissioned by the Customer and you shall, at your cost insure (and keep insured) the Goods for their full insurable value.
- (c) Until ownership passes to you:
  - (i) you shall hold the Goods as bailee and as a fiduciary for us;
  - (ii) unless otherwise notified by us in writing, you are not authorized to sell the Goods in the ordinary course of business;
  - (iii) we shall be entitled to enter your premises between 9:00 am and 5:00 pm to inspect the Goods;

### 1.7 Warranties

- (a) The Supplier warrants that the Goods are of merchantable quality and reasonably fit for the purpose for which they are supplied.
- (b) Subject to the law, all other warranties or representations, whether statutory or otherwise, and whether express or implied or oral or written as to the state, quality or fitness of the Goods are hereby expressly excluded save and except conditions and warranties implied by the Trade Practices Act 1974 (Cth) and other conditions or warranties which by a relevant statute are expressed to be incapable of exclusion.
- (c) Subject to the law, our obligations to you in respect of breach of any term, warranty or condition of this Agreement (whether implied by statute or otherwise) shall, at our option be limited to:
  - (i) the replacement of the Goods supplied or the supply of equivalent Goods; or
  - (ii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods.
- (d) Except as provided by statute, the supplier shall not be liable to you or any other person for any loss, liability or damage arising out of any advice, recommendation, information or services provided by us regarding the Goods or the methods or conditions of application and use of the Goods including any loss, liability or damage which arises as a result of any act, or negligence on your part or the part of your employees or agents.

## **1.8 Claims**

- (a) If you believe that the Goods which we deliver do not accord with those described in your Order, you must give us notice in writing within seven (7) days from the date of delivery. If you do not give us such notice, you will be deemed to accept the Goods and must pay us the full price for the Goods.
- (b) If you have any claim against us in relation to the Goods, you must notify us immediately upon becoming aware of the circumstances giving rise to such a claim, and allow us or our servants or agents full and free access to the Goods in relation to which the claim is made (or the place where the Goods have been applied or used) for the purpose of conducting such tests and examination as we may in our absolute discretion consider necessary to determine whether the claim is justified or not.

## **1.9 Return of Goods**

- (a) You must not return any Goods to us unless you first contact us and obtain a return authority in writing.
- (b) If we provide you with a return authority pursuant to subparagraph you must:
  - (i) ensure that a copy of the return authority and the original invoice number of the Goods are clearly displayed on any packaging in which you return the Goods to us; and
  - (ii) pay to us a handling fee equal to 10% of the Price of the Goods unless the goods are defective or have been supplied by our error.
- (c) If you return Goods to us without complying with subparagraphs (a) and (b) above, the Goods will be returned to you at your expense.
- (d) We will not replace or reimburse the Price of the Goods unless we have inspected the Goods and formed the view that the Goods are defective or were supplied by our error.

## **1.10 Default**

- (a) If you:
  - (i) fail to make payment for the Goods in accordance with clause 1.5;
  - (ii) breach any material term of any contract with the Supplier;
  - (iii) commence to be wound up provisionally or officially or are placed under administration;
  - (iv) have a receiver or manager appointed;
  - (v) become insolvent or bankrupt or commit an act of bankruptcy; or
  - (vi) part with possession of the Goods, or any of them, otherwise than by way of sale in the ordinary course of business, the whole of the sum owing by you to us shall immediately become due and payable, your right to deal further in any way with the Goods shall cease immediately and you shall deliver to us all unpaid Goods upon receipt of our written demand. We may cancel or suspend any order that has been accepted by us but not fulfilled without being liable to you in any way whatsoever.
  - (vii) cease to carry on business;
  - (viii) have a mortgage enter into possession of your assets;
  - (ix) enter into an informal scheme of arrangement with your creditors.
- (b) We shall, without prejudice to any of our other rights, be entitled to enter your premises at any time to do all things necessary in order to take possession of the Goods.
- (c) Upon retaking possession of Goods pursuant to clause 1.9 (b) we shall, within a reasonable time, inspect those Goods and credit your account with such sum which we in our absolute discretion consider to be fair and reasonable value of the Goods after making due allowance for:
  - (i) the price for which those Goods were sold to the Customer;
  - (ii) the condition of the Goods at the time of repossession; and
  - (iii) the costs incurred by Dormer Soil Samplers in connection with the repossession, sorting and examination of the Goods.
- (d) You shall be liable to pay on demand all costs of whatsoever nature of and associated with the exercise of our rights under this clause.

## **1.11 Force Majeure**

We may partially or totally suspend delivery of Goods to you during any period in which we may be prevented or hindered from delivering by normal means of supply or by normal route through any circumstances outside our reasonable control, including but not limited to strikes, lockouts, raw materials shortages, accidents or breakdowns of plant or machine. If due to short supply of any material, ingredient or other stock, we are unable to supply Goods to you we may at our sole discretion apportion available supply to any of our customers and will not be regarded as in breach of contract for so doing.

## **1.12 Specials (non standard goods or colours)**

Any Special Products which we supply to you, unless otherwise provided by statute may not be returned for refund or replacement, and you must accept variations of plus or minus 10% in the quantities of orders for Special Products.

## **1.13 Patents**

- (a) If you furnish any design or instruction to us in relation to the Goods or Special Products, you warrant that the execution of your Order shall not cause us to infringe any patent, registered design or trade mark, and you indemnify us against any infringement or unauthorized use of patent, trademark, design or copyright arising out of the use of Goods.
- (b) You acknowledge that the sale and purchase of the Goods under this Agreement does not confer on you any license or rights under any patent, trade mark or copyright which is the property of Dormer Soil Samplers or any Related Bodies Corporate.

## **1.14 Waiver**

Failure by the Supplier to insist upon strict performance of any of the Terms and Conditions of Sale shall not be deemed a waiver thereof or any rights the Supplier may have and shall not be deemed a waiver of any subsequent breach of any term or condition. Any condition or part of any condition that would have the effect of rendering all or any part of these terms and conditions void or voidable or otherwise unenforceable shall be served and the remaining parts of the condition or conditions shall not be affected.

## **1.15 General**

- (a) The law applicable to this Agreement is the law of New South Wales. The parties submit to the jurisdiction of New South Wales courts.
- (b) The Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of the Supplier.