

MELBOURNE PRESSURE CLEANING GENERAL TERMS & CONDITIONS

1. Definitions

- 1.1. **'Melbourne Pressure Cleaning'** means Mr. Adrian Macintyre T/AS Melbourne Pressure Cleaning ABN 43 295 202 358 its successors and assigns or any person acting on behalf of and with the authority of Melbourne Pressure Cleaning.
- 1.2. **'Customer'** means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Melbourne Pressure Cleaning to the Customer.
- 1.3. **'Services'** means all services supplied by Melbourne Pressure Cleaning to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined above).
- 1.4. **'Price'** means the Price payable for the Services as agreed between Melbourne Pressure Cleaning and the Customer in accordance with clause 4 hereof.

2. Competition and Consumer Act 2010 (Cth) ('CCA')

- 2.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA (including any substitute to that Act or re-enactment thereof), except to the extent permitted by that Act where applicable.
- 2.2. Where the Customer buys Services or Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

3. Acceptance

- 3.1. Any instructions received by Melbourne Pressure Cleaning from the Customer for the supply of Services and/or the Customer's acceptance of Services supplied by Melbourne Pressure Cleaning shall constitute acceptance of the terms and conditions contained herein.
- 3.2. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

3.3. Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Melbourne Pressure Cleaning and the Customer.

3.4. Services are supplied by Melbourne Pressure Cleaning only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

4.1. All prices shall be in Australian dollars and at Melbourne Pressure Cleaning's sole discretion the Price shall be either:

- (a) As indicated on invoices provided by Melbourne Pressure Cleaning to the Customer in respect of Services supplied; or
- (b) Melbourne Pressure Cleaning's current Price at the date of delivery of the Services according to Melbourne Pressure Cleaning's current Price List; or
- (c) Melbourne Pressure Cleaning quoted Price (subject to clause 4.2) which shall be binding upon Melbourne Pressure Cleaning provided that the Customer shall accept Melbourne Pressure Cleaning's quotation in writing within thirty (30) days.

4.2. Melbourne Pressure Cleaning reserves the right to change the Price in the event of a variation to Melbourne Pressure Cleaning's quotation. Any variation from the quotation will be charged for on the basis of Melbourne Pressure Cleaning's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of payment of the Price in accordance with these Terms and Conditions.

4.3. If delivery of the services is delayed at the Customer's request, full payment is due when the customer places the order on hold. Delivery of the services will not commence until full payment is rendered.

4.4. At Melbourne Pressure Cleaning's sole discretion, a deposit or down-payment may be required.

4.5. Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.6. GST and other taxes and duties that may be applicable shall be added to the Price except where they are expressly included in the Price.

5. Personal Property Securities Act 2009 ('the PPSA')

5.1. The customer acknowledges and agrees that:

- (a) These Terms and Conditions constitutes a security agreement for the purposes of section 20 of the PPSA; and
- (b) To secure payment of all amounts owing by the Customer Melbourne Pressure Cleaning takes a security interest over any property owned by the Customer ("**Secured Assets**").

5.2. The Customer agrees to:

- (a) Promptly sign any further documents and/or to provide any further information or do any other things reasonably required by Melbourne Pressure Cleaning to perfect and maintain the perfection of the security interest of Melbourne Pressure Cleaning which shall include the registration of a financing statement or financing change statement on the PPSR;
- (b) Provide written notification to Melbourne Pressure Cleaning if it has knowledge of any competing security interest, and to do and perform any acts that may be necessary to ensure that Melbourne Pressure Cleaning's interest is granted priority; and
- (c) Not register a financing change statement or a charge demand without Melbourne Pressure Cleaning's prior written consent.

5.3. To give effect to the provisions of clauses 6.1 and 6.2 hereof, the Customer agrees to do and perform any acts that may be necessary to perfect

and/or preserve the security interest granted by the Customer over the Secured Assets.

5.4. The parties agree, to the extent permissible, to contract out of the PPSA in accordance with section 115 of the PPSA to the extent that section 115 applies for the benefit of, and does not impose a burden on Melbourne Pressure Cleaning. The Customer waives its right to receive a verification statement under part 5.3D of the PPSA in respect of any financing statement or financing change statement registered by or on behalf of Melbourne Pressure Cleaning in respect of the security interest created by this Agreement.

5.5. Melbourne Pressure Cleaning acknowledges the Customer's right to sell the Secured Assets and agrees that nothing in clause 6.1, 6.2 and 6.3 hereof will affect their right to sell the Secured Assets in accordance with these Terms and Conditions:

- (a) Financing statement has the meaning given to it by the PPSA;
- (b) Financing change statement has the meaning given to it by the PPSA;
- (c) Security agreement means the security agreement under the PPSA created between the Customer and Melbourne Pressure Cleaning by these terms and conditions; and
- (d) Security interest has the meaning given to it by the PPSA.

5.6. The Customer acknowledges and agrees that these terms and conditions:

- (a) Constitute a security agreement for the purposes of the PPSA; and
- (b) Create a security interest in:
 - i. All Services previously supplied by Melbourne Pressure Cleaning to the Customer (if any); and
 - ii. All Services that will be supplied in the future by Melbourne Pressure Cleaning to the Customer.

5.7. The Customer undertakes to:

- (a) Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Melbourne

Pressure Cleaning may reasonable require to:

- i. Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- ii. Register any other document required to be registered by the PPSA; or
- iii. Correct a defect in a statement referred to in clause 6.5(a) or 6.5(b) hereof, Indemnify, and upon demand reimburse, Melbourne Pressure Cleaning for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Services charged thereby;
- iv. Not register a financing change statement in respect of a security interest without the prior written consent of Melbourne Pressure Cleaning; and
- v. Immediately advise Melbourne Pressure Cleaning of any material change in its business practices of selling the Services which would result in a change in the nature of proceeds derived from such sales.

5.8. Melbourne Pressure Cleaning and the Customer agree that section 96, 115 and 125 of the PPSA do not apply to the security agreement by these terms and conditions.

5.9. The Customer hereby waives its rights to receive notices under section 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

5.10. The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

5.11. Unless otherwise agreed to in writing by Melbourne Pressure Cleaning, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

5.12. The Customer will unconditionally ratify any actions taken by Melbourne Pressure Cleaning under clauses 6.3 to 6.5 hereof.

6. Defects

The Customer shall inspect the works completed by Melbourne Pressure Cleaning upon completion and shall notify Melbourne Pressure Cleaning of any alleged defect, damage or failure to comply with the description or quotation within 48 hours of completion. The Customer shall afford Melbourne Pressure Cleaning an opportunity to inspect the works within a reasonable time following where the Customer believes the works are defective in any way. If the Customer fails to comply with these provisions the works shall be presumed to be free from any defect or damage. For defective works, which Melbourne Pressure Cleaning has agreed in writing that the Customer is entitled to reject, Melbourne Pressure Cleaning's liability is limited to either (at Melbourne Pressure Cleaning's discretion) replacing the works or repairing the works except where the Customer has acquired Services as a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) and is therefore also entitled to, at the consumer's discretion, either to a refund of the purchase Price of the Services, or repair of the Services, or replacement of the Services

7. Occupational Health and Safety

It is the Customer's or the user's responsibility to install and use any Product in a safe manner in its facility and to provide all proper devices, tools and means that may be necessary to protect all personnel from bodily injury that may result from Customer's particular use, operation, set-up or service of Melbourne Pressure Cleaning's Services. The Customer is advised to consult the operator, machine and programming manuals, Safety Standards and state and federal regulations. The Customer shall install and use the Services at all times in compliance with the foregoing manuals, safety standards, applicable codes, ordinances, regulations and laws and general standards of care.

8. Acceptance of quality of services

8.1. Upon acceptance of the Quote provided by Melbourne Pressure Cleaning by the Customer, the Customer accepts the services provided in accordance with these Terms & Conditions.

8.2. Except as provided in clause 6 the quality of the services, including but not limited to, the colour, strength, specifications, manufacture, supply and/or installing of concrete are

accurate, correct and suitable in all respects for the Purchaser's intended use.

- 8.3. The Customer agrees that the sample colour of the concrete sealers and coatings selected by the Customer may vary slightly to the finished product from time to time. The Customer acknowledges that in these circumstances the Customer will not raise any claim nor refuse to make payment.

9. Government Restrictions

- 9.1. Melbourne Pressure Cleaning's performance under any contract is subject to the issuance of any required export license or other necessary government authorisation.
- 9.2. Melbourne Pressure Cleaning has the right to terminate without liability any Proposal, order or contract if Melbourne Pressure Cleaning determines such sale, export or delivery violates applicable law.
- 9.3. Termination under this clause will not affect the right of Melbourne Pressure Cleaning to recover the contract price for any unpaid services already provided.

10. Harmless / Indemnity

- 10.1. The Customer hereby releases and agrees to defend, indemnify and hold Melbourne Pressure Cleaning harmless from and against all claims, demands, suits and causes of action ("liability") for property damage, personal injury or death, and all loss, cost, damage and expense (including reasonable Lawyers' fees) relating to the Services, arising out of:
- (a) Customer's modification to, or change of the Services and/or works; and/or
 - (b) The Customer's negligence, violation of law or other fault.

11. Severability

If any of these Terms & Conditions or any provision of the contract between Melbourne Pressure Cleaning and Customer is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions (or part thereof) shall remain in full force and effect.

12. No Waiver

Melbourne Pressure Cleaning shall have the benefit of all rights and remedies provided by law or equity. Failure of Melbourne Pressure Cleaning to exercise or reserve any right or remedy, or term or condition of any contract, shall not be construed as a waiver or relinquishment of any of the other right, remedy, term or condition of any contract or the future performance or exercise of any such term, condition, right or remedy.

13. No Implied Service

The Customer acknowledges and agrees that except as required by law this contract shall not entitle the Customer to demand and receive from Melbourne Pressure Cleaning any site inspection or service of the works supplied, delivered and/or installed (if applicable). If the Customer does require Melbourne Pressure Cleaning to provide such services in relation to the works supplied under this contract then the Customer shall arrange with Melbourne Pressure Cleaning to enter into a separate agreement in respect of the same. In the event that no separate agreement in relation to such works is required by the Customer, then the Customer acknowledges and agrees that in the event of the works supplied requiring to be serviced or inspected due to breakdown or otherwise, then the Customer shall rely solely on any benefit in respect of the same provided by the manufacturer).

14. Default and Consequences

- 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 one-half percent (2.5%) per calendar month over the default interest rate under section 2 of *the Penalty Interest Rate Act 1983* (Vic) subsequent as well as prior to any judgement.
- 14.2. In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Melbourne Pressure Cleaning.
- 14.3. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Melbourne Pressure Cleaning from and against all costs and disbursements incurred by Melbourne Pressure Cleaning in pursuing the debt including legal costs on a solicitor and own client basis and Melbourne Pressure Cleaning collection agency costs.

- 14.4. Without prejudice to any other remedies Melbourne Pressure Cleaning may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Melbourne Pressure Cleaning may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. Melbourne Pressure Cleaning will not be liable to the Customer for any loss or damage the Customer suffers because Melbourne Pressure Cleaning has exercised its rights under this clause.

- 14.5. If any account remains overdue after thirty (30) days then an amount of the greater of one hundred dollars (\$100.00) or ten percent (10%) of the amount overdue (up to a maximum of fifty dollars (\$250.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6. Without prejudice to Melbourne Pressure Cleaning's other remedies at law Melbourne Pressure Cleaning shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Melbourne Pressure Cleaning shall, whether or not due for payment, become immediately payable in the event that:

- (a) Any money payable to Melbourne Pressure Cleaning becomes overdue, or in Melbourne Pressure Cleaning' opinion the Customer will be unable to meet its payments as they fall due; or
- (b) 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
- (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. Melbourne Pressure Cleaning may cancel any contract to which these Terms and Conditions apply or cancel delivery of Services at any time by giving written notice to the Customer. On giving such notice Melbourne Pressure Cleaning shall repay to the Customer any sums paid in respect of the Price.

Melbourne Pressure Cleaning shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 15.2.** In the event that the Customer cancels delivery of Services the Customer shall be liable for any loss incurred by Melbourne Pressure Cleaning (including, but not limited to, any loss of profits) up to the time of cancellation.

16. Governing Language

In the event of translation of these Terms and Conditions to a language other than English, the English language shall govern

17. General

- 17.1.** 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.

- 17.2.** If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

- 17.3.** These Terms and Conditions and any contract to which they apply shall be governed by the laws of the State of Victoria and are subject to the jurisdiction of the courts of that same State.

- 17.4.** Melbourne Pressure Cleaning 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 malfunction or failure of the Services.

- 17.5.** In the event of any breach of this contract by Melbourne Pressure Cleaning the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Services.

- 17.6.** 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 Melbourne Pressure Cleaning nor to withhold payment of any invoice because part of that invoice is in dispute.

- 17.7.** Melbourne Pressure Cleaning may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

- 17.8.** The Customer agrees that Melbourne Pressure Cleaning may review these terms and conditions

at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Melbourne Pressure Cleaning notifies the Customer of such change. The Customer shall be under no obligation to accept such changes except where Melbourne Pressure Cleaning supplies further Services to the Customer and the Customer accepts such Services.

- 17.9.** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

- 17.10.** The failure by Melbourne Pressure Cleaning to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Melbourne Pressure Cleaning's right to subsequently enforce that provision.

