

# Quotation Terms & Conditions

Grate Drainage Pty Ltd ACN 110 331 452



## 1. General

1.1 The Grate Drainage Products Pty Ltd quotation comprises the quotation form ('**Quotation Form**') overleaf and the following terms and conditions, collectively herein referred to as '**Quotation**'. Acceptance of the Quotation includes the acceptance of the following terms and conditions. Except in so far as any express written undertaking is given by the Company, these conditions are in place of and exclude all other warranties and conditions whether express or implied by statute or otherwise. '**Customer**' means the party to whom the Quotation Form is addressed overleaf. '**Company**' means Grate Drainage Products Pty Ltd ACN 110 331 452, its related bodies corporate and its employees, agents, directors and independent contractors. '**Services**' means the services and/or products specified in the Quotation Form overleaf to be performed or provided by the Company. '**Loss**' means damage, loss, cost, expense, liability or injury (whether actual or contingent). '**Price**' means the price stated in the Quotation Form overleaf in Australian Dollars.

## 2. Quotation & Acceptance

2.1 This Quotation is subject to withdrawal, correction or alteration at any time before the Customer's acceptance of the Quotation.

2.2 The Quotation constitutes the Company's offer of the Services for purchase by the Customer and the receipt of the Quotation by the Customer and the Guarantor will not create any contract between the Customer and the Guarantor and the Company, until the Quotation is accepted.

2.3 Acceptance of the Quotation may be via communication of acceptance in any form (whether written or verbal) to the Company, its agents, employees or representatives by the Customer, its agents, employees or representatives. Acceptance of the Quotation by the Customer may also be via conduct including, but not limited to, providing instructions to the Company, providing materials or information to the Company, receiving Goods etc. Acceptance of the Quotation by the Customer is also an acceptance of the Quotation by Guarantor. Acceptance of the Quotation by the Customer and Guarantor does not require the signature of principals or the affixing of a seal of the Customer or the signature of the Guarantor.

2.4 Where an individual whom accepts this Quotation ('**Acceptor**') as per the preceding clause does not have the actual or ostensible authority to bind the Customer, the Customer and the Acceptor will be jointly and severally liable for the Customer's obligations and warranties under this Quotation.

2.5 If the Quotation is in error in that it:

- contains an incorrect quantity in relation to any item included therein; or
- contains an item which should not have been included therein; or
- omits an item which should have been included therein;

then the Price stated in the Quotation shall be adjusted by such amount as is required to correct the error.

## 3. Limits of Contract

3.1 The Quotation includes only Services as specified overleaf.

## 4. Exclusion of Liability

4.1 To the extent permitted by the law the liability of the Company whether in contract or in tort, in respect of all claims for loss arising from a breach of any of the Company's obligations arising under the contract, from any negligence of any act, matter or thing done or permitted to be done by the Company, its servants, agents and contractors shall not in the aggregate exceed the Price stated in the Quotation.

4.2 Under no circumstances will the Company be liable for any loss of profits or any consequential, indirect or special loss, damages or injury of any kind whatsoever suffered by the Customer or its servants, agents and contractors and the Customer acknowledges this express exclusion of liability.

4.3 Except as provided herein, all express and implied warranties and guarantees as to the Services are hereby expressly excluded and the Company shall not be liable for Loss, damage consequential loss of any kind arising out of the supply, layout, assembly, installation or operation of the Services.

## 5. Termination

5.1 Without prejudice to the Company's rights herein including rights to recover all outstanding amounts under the Quotation the Company may terminate this Quotation by notice in writing to the Customer:

- if any payment is outstanding for more than seven days after the due date (whether legally or formally demanded or not);
- if the Customer fails to perform any of its obligations herein; or
- upon the Customer:
  - becoming bankrupt;
  - entering into voluntary or compulsory liquidation;
  - entering into administration;
  - having a receiver or provisional liquidator appointed; or
  - if execution is levied in respect of any of its assets.

## 6. Dispatch, Transport and Delivery

6.1 Any time given for the transport, delivery or completion are estimates only and shall be regarded only as a time when the Company expects to be able to deliver or complete having regard to the circumstances current at the date of Quotation. Time is estimated to commence from the date of receipt by the Company of the Customer's acceptance of the Quote. The Company shall not be liable to the Customer for any Loss or damage whatsoever arising directly or indirectly from the failure by the Company (for any reason whatsoever including negligence) to deliver goods or perform services on or before the quoted date. The Customer must accept and pay for Services notwithstanding any failure by the Company to deliver by the quoted date for any reason.

6.2 The Company is not responsible to the Customer or any person claiming through the Customer for any Loss or damage to goods or materials in transit caused by any event of any kind by any person (whether or not the Company is legally responsible for the person who caused or contributed to that loss or damage).

6.3 Where the Customer has requested or stipulated to the Company the location to which goods, materials or waste are to be transported and for whatever reason that requested recipient is not able to accept delivery, then the Company may at its discretion:

- Return the goods, materials or waste to the Customer; or
- Store the goods, materials or waste; and/or
- Transport the goods, materials or waste to an alternative site; and

the Customer indemnifies the Company for all Loss, damage or costs, of what ever nature, arising from or as a consequence of the goods, materials or waste not being delivered to the location requested or stipulated by the Customer.

6.4 This Quotation assumes ease of access for the loading of the goods, materials or waste that the Customer has requested be transported pursuant to this Quotation and where there is no such ease of access the Company has the right to adjust the Price stated in the Quotation to such amount as is required to reasonably cover the Company's loss and hereby indemnifies the Company for such Loss.

## 7. Payment

7.1 The Company reserves the right to seek a non-refundable deposit from the Customer, the terms of which to be stated in the Quotation overleaf. Where a Deposit is sought it shall be payable within three working days (or less where advised by the Company) of acceptance of the Quotation by the Customer. The Company reserves the right not to commence any work until the deposit is paid in full.

7.2 Payment terms are net 30 days or less (where indicated in the Quotation overleaf) from the last day of the month in which the tax invoice is dated. The Company's preferred method of payment is via electronic funds transfer into the Company's nominated bank account, details of which are set out in the Quotation overleaf.

7.3 In the event that the Customer fails to make any payment when due then without prejudice to the application of any other provision hereof or to any other remedy provided hereunder or otherwise, interest shall accrue on the amount of the overdue payment at the rate of fifteen per centum (15%) per annum calculated from the date payment was due and the Company shall have the right to withhold further deliveries and to cancel all outstanding orders and retain any payments already made.

7.4 No cheque will be treated as payment if dishonoured despite the issue of a receipt. The Customer will be responsible for any charge or fee issued to the Company for any cheques not met on presentation.

## 8. Goods and Services tax.

8.1 All monies payable by the Customer under the Quotation are exclusive of goods and services tax or like impost (GST) unless expressly stated otherwise.

8.2 Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the Customer to the Company at the same time as other monies are payable.

## 9. Personal Property and Securities Act 2009 (CTH) ("PPSA")

9.1. In this clause Financing Statement, Financing Change Statement, Security Agreement, and Security Interest has the meaning given to it by the PPSA.

9.2. The Customer hereby acknowledges that these terms and conditions constitute a Security Agreement which creates a security interest in favour of the Company in all goods that have previously been supplied and that will be supplied in the future by the Company to the Customer. The Customer acknowledges and agrees that by assenting to these terms and conditions, the Customer grants a security interest to the Company.

9.3. The Customer undertakes to:

- Promptly sign any further documents and/or provide any further information (such information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a Financing Statement or Financing Change Statement in relation to a security interest on the Personal Property Securities Register ("**PPSR**");
- Register any other document required to be registered by the PPSA; or correct a defect in a statement in any document registered or required to be registered on the PPSR pursuant to the PPSA;
- Not register a Financing Change Statement as defined in Section 10 of the PPSA or make a demand to alter the Financing Statement pursuant to Section 178 of the PPSA in respect of the goods without the prior written consent of the Company;
- Not register or permit to be registered a Financing Statement or Financing Change Statement in relation to the goods in favour of a third party without the prior written consent of the Company;
- Pay all costs, upon demand, incurred by the Company in registering and maintaining a Financing Statement or Financing Change Statement on the PPSR and/or enforcing or attempting to enforce the security interest created by these terms and conditions including executing subordination agreements;
- Be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and Customer basis) in obtaining an order pursuant to Section 182 of the PPSA.

9.4. The Customer agrees to waive any right it may have under Section 115 of the PPSA upon enforcement. The Customer waives their rights to receive notices under Sections 95, 118, 121 (4), 130, 132 (3)(d) and 132 (4) of the PPSA pursuant to Section 157 of the PPSA, unless otherwise agreed to in writing by the Company, the Customer waives any right to receive the verification statement in respect to a Financing Statement or Financing Change Statement relating to the security interest.

9.5. The Customer agrees that immediately on request by the Company, the Customer will procure from any persons considered by the Company to be relevant to its security position, such agreement and waivers as the company may at any time require.

9.6. Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of the provisions of the PPSA.

## 10. Caveatable Interest

10.1 If there are any monies outstanding to the Company from the Customer at any time, then, it is acknowledged by the Customer, that those outstanding monies constitute a charge by the Company over any real estate owned by the Customer thereby enabling the Company to register a Caveat against the title to any such real estate. For avoidance of any doubt, this clause is intended to create a caveatable interest in favour of the Company.

## 11. Price Variation

11.1 Prices are based upon the Company's costs as at the date of the Quotation including bought-in goods, fuel, transport costs and costs arising from statutory obligations, and if between the date of the Quotation and the completion of the work, variations occur in these costs the prices in the Quotation price shall be amended accordingly.

11.2 Where specifications, instructions or other particulars are supplied by the Customer, the Customer warrants the accuracy of such and acknowledges that the Company's Quotation is made on the basis of such. If there are any adjustments required to the Services given the inaccuracy or changes to the specifications, instructions or other particulars supplied by the Customer, then the Company reserves the right to adjust the Quotation price accordingly.

## 12. Sub-Contract

12.1 The Customer agrees that the Company may subcontract the whole or any part of the Services on any terms and conditions as the Company sees fit.

## 13. Extra Cost

13.1 In the event of the suspension of the work by the Customer's instructions or lack of instructions, the Price shall be increased to cover any extra expense incurred by the Company.

## 14. Force Majeure

14.1 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company or the Customer either is unable to perform in whole or in part any obligation under this agreement that party is relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and is not be liable to the other party to this agreement in respect of such inability.

## 15. Legal construction

15.1 This contract shall be governed and interpreted with reference to the laws for the time being in force in the State of New South Wales.

## 16. Credit Application

16.1 Where the Customer has entered into a credit account with the Company which is still on foot as at the date of this Quotation, where there is any inconsistency between this Quotation and the terms and conditions of the credit account, the latter shall prevail.