



## TRADING TERMS AND CONDITIONS

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### 1. PARTIES:

The Supplier: Icon Walls Pty Ltd (ACN: 167 907 146)

The Customer: To whom this may concern

### 2. DEFINITIONS

- 2.1. The Supplier is Icon Walls Pty Ltd (ACN: 167 907 146) of 11 Kitchen Rd, Dandenong South in the state of Victoria.
- 2.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 2.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
- 2.4. The Order shall be defined as any request for the provision of Goods by the Customer with the Supplier which has been accepted by the Supplier.
- 2.5. The Goods are the retaining wall products and/or related products provided by the Supplier.
- 2.6. The Price is the amount invoiced for Goods supplied.
- 2.7. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 2.8. Tax invoices include tax invoices for Goods supplied.
- 2.9. Major failure in this Agreement is as defined under the *Competition and Consumer Act 2010*.
- 2.10. Security interest as defined in Section 12 of the *Personal Property Securities Act 2009* (Cth).
- 2.11. "Security Agreement", "Commingled Goods", "Collateral", "Financing Statement", "Financing Change Statement" is defined under Section 10 of the *Personal Property Securities Act 2009* (Cth).
- 2.12. GST refers to Goods and Services Tax under the *Goods and Services Act 1999* ("GST Act") and the terms used herein have meanings contained within the GST Act.

### 3. GENERAL

- 3.1. These Terms and Conditions together with the Supplier's Credit Application Form and the Supplier's written or verbal quotation form this Agreement.
- 3.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and 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.
- 3.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 3.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 3.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 3.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 3.7. 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.
- 3.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.

- 3.9. The failure by the Parties to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect each Party's right to subsequently enforce that provision.
- 3.10. The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier'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.

#### **4. PLACEMENT OF ORDERS**

- 4.1. Orders placed by the Customer with the Supplier will be considered valid when placing the Order by telephone.
- 4.2. Any written Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation. Quotations may also be provided to the Customer by verbal communication over the telephone.
- 4.3. 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 Supplier.

#### **5. PRICE**

- 5.1. The Supplier reserves the right to change the Price to the Supplier's Order in the event of a variation which was previously unknown or unforeseen by the Parties at the time the Order was placed, and notice will be provided in writing by the Supplier within a reasonable time.
- 5.2. At the Supplier's sole discretion the Price shall be either:
  - 5.2.1. As detailed on invoices provided by the Supplier to the Customer in respect of Goods supplied; or
  - 5.2.2. The Supplier's quoted Price as for the Order (subject to clause 5.1).

#### **6. SUPPLY AND DELIVERY OF GOODS**

- 6.1. At any time before payment is made by the Customer, the Supplier reserves their right to:
  - 6.1.1. Decline requests for any Goods requested by the Customer.
  - 6.1.2. Cancel or postpone the delivery of Goods at their discretion.
- 6.2. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
- 6.3. If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier, be liable for the Supplier's standard Non Delivery Fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage.
- 6.4. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Customer during the term of this Agreement.
- 6.5. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and of satisfying the Customer's expectations of those Goods.
- 6.6. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods to be provided.
- 6.7. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- 6.8. The Customer acknowledges that the sample Goods are only indicative of the colour of the Goods and that there may be some colour variation between the sample Goods and the actual Goods received.
- 6.9. The Supplier may agree to provide, on request from the Customer, additional Goods not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Goods includes, but is not limited to, alterations by the Supplier after provision of the Goods at the request of the Customer.
- 6.10. The Customer is responsible for ensuring that the Goods are secured at the Premises and warrants to be responsible for any loss, damage or theft of the Goods delivered by the Supplier to the Premises.

#### **7. PAYMENT AND CREDIT POLICY**

- 7.1. Any reference to Customer shall include all Customers, unless it refers to a specific group of Customers.
- 7.2. For credit purposes, the two main groups of Customers are Non-Account Customers and Account Customers.
- 7.3. **Non-Account Customers**
  - 7.3.1. The Customer must make full payment to the Supplier at the time of making the Order.
- 7.4. **Account Customers**

- 7.4.1. Account customers must make full payment to the Supplier within thirty (30) days from the end of month on the Supplier's tax invoice(s).

#### **Credit**

- 7.5. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- 7.6. Any credit granted may be revised by the Supplier at any time and at its discretion.
- 7.7. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms of 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.
- 7.8. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

#### **8. DISHONOUR OF CHEQUE**

- 8.1. If any cheque issued by the Customer or by any third party in payment of the Price is dishonoured:
- 8.1.1. The Supplier may refuse to supply any further Goods until satisfactory payment is received in full, including bank fees and charges;
- 8.1.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
- 8.1.3. The Customer may be liable for a dishonoured cheque fee of \$15.00.

#### **9. DEFAULT**

- 9.1. Invoices issued by the Supplier shall be due and payable within thirty (30) days from the end of month on the Supplier's tax invoice(s) ("Default Date"). Without prejudice to any other rights of the Supplier, the Customer may be charged interest at the rate of twelve per centum (12%) per annum, calculated monthly, on any payment in arrears.
- 9.2. If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
- 9.2.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
- 9.2.2. In the event of the Customer being in default of his obligation to pay, and the overdue account is then referred to a debt collection agency and/or law firm for collection, the Customer shall be liable for the recovery costs incurred, and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

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

- 9.2.3. 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](http://www.prushka.com.au)
- 9.2.4. In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

#### **10. RISK AND LIABILITY**

- 10.1. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.
- 10.2. The Supplier 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 Supplier for any work required to rectify the Order.
- 10.3. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
- 10.4. The Supplier takes no responsibility and will not be liable for any indirect, special or consequential loss or damage resulting in the Goods being faulty as a consequence of insufficient information provided by the Customer.

- 10.5. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer, which was organised by the Customer.
- 10.6. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any indirect, special or consequential loss or damage incurred as a result of delay, or failure to provide the Goods or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 10.7. The Supplier does not represent that it will provide and/or deliver any Goods unless it is included in the Quote.
- 10.8. Subject to Clause 12.1 and 12.2, the Customer accepts risk in relation to the Goods when Goods pass to their care and/or control.
- 10.9. The Customer acknowledges that the Supplier shall not be liable for obtaining, and the Customer releases the Supplier from any indirect, special or consequential loss or damage incurred as a result of a failure to obtain, any required engineering advice, reports and/or assessments and for obtaining any necessary permits and/or certification required for the building of a retaining wall.

## **11. RETURNS**

- 11.1. At the Supplier's discretion, the Customer may return the Goods within thirty (30) days for a partial refund on the following conditions:
  - 11.1.1. The Goods returned by the Customer to the Supplier must be in the same state and condition as they were in when originally delivered; and
  - 11.1.2. The Customer is liable to the Supplier for a restocking fee of twenty-five per centum (25%) of the Price paid by the Customer.
- 11.2. The Supplier acknowledges that in the event the Goods are returned for warranty reasons, clause 11.1 will not apply.

## **12. WARRANTY**

- 12.1. The Supplier warrants that the Customer's rights and remedies in this Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the Goods to which the warranty relates.
- 12.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Competition and Consumer Act 2010 (Cth) or any related or complementary legislation or regulations as in force and amended from time to time.

### **Warranty for Goods**

- 12.3. The Customer warrants that it will report any defect in any Goods supplied within fourteen (14) from the date that the defect became apparent (time being of the essence).
- 12.4. The Supplier warrants:

*Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods are not of acceptable quality and the failure does not amount to a major failure.*
- 12.5. The Customer acknowledges that additional costs incurred, such as labour and/or freight, will be borne by the Customer.
- 12.6. If the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a consumer guarantee under the Australian Consumer Law in relation to those Goods is limited to, at the discretion of the Supplier:
  - 12.6.1. The resupply of the Goods;
  - 12.6.2. The payment of the cost of providing the Goods again.

### **Claims made under Warranty**

- 12.7. Subject to clause 12.2 of this Agreement claims for warranty should be made in one of the following ways:
  - 12.7.1. The Customer must send the claim in writing together with proof of purchase to the Supplier's business address stated in clause 2.1 of this Agreement;
  - 12.7.2. The Customer must email the claim together with the proof of purchase to the Supplier on [info@iconwalls.com.au](mailto:info@iconwalls.com.au).
  - 12.7.3. The Customer must contact the Supplier on the Supplier's business number (03) 9706 4779 or 0438 697 309.

- 12.8. Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its Agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification.

### **13. RETENTION OF TITLE**

- 13.1. While the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading), legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the supplier to the Customer is made. Pending such payment the Customer:
  - 13.1.1. Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.
  - 13.1.2. Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession.
- 13.2. The Supplier is authorised to enter the Premises or the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.
- 13.3. The Customer acknowledges that the Supplier may produce this clause to register its legal and equitable interest of the Goods as a secured party in accordance with the provisions of the *Personal Property Securities Act 2009*.

### **14. PERSONAL PROPERTIES SECURITIES ACT 2009 (CTH)**

- 14.1. In accordance with the PPSA and complementary or interrelated legislation and or regulations as amended from time to time, the Customer hereby acknowledges and agrees that this Agreement constitutes a Security Agreement which creates a Security Interest in favour of the Supplier to secure payment of the Price or any other amount owing under this agreement from time to time, extending to personal property previously supplied by the Supplier to the Customer, future advances and after-acquired property.
- 14.2. The Security Interest arising from any retention of title, as provided for in these Terms and Conditions, is a purchase money security interest (PMSI) under Section 14 of the PPSA and by entering into this Agreement, the Customer agrees to grant a PMSI to the Supplier.
- 14.3. Pursuant to the Clause 13, the Supplier has a PMSI in all Goods which are provided to the Customer by the Supplier on credit including any Commingled Goods.
- 14.4. The Supplier shall be entitled without notice to the Customer to register a Security Interest on the Personal Properties Securities Register (PPSR) as constituted and maintained in connection with the PPSA by an appointed regulatory authority.
- 14.5. The Customer agrees that the Supplier will not disclose information pertaining to the Security Interest to an interested party unless it is required to do so under Section 275(6) of the PPSA or otherwise under the general law. The Supplier will not be liable for any loss sustained as a result of disclosure to a third party.
- 14.6. The Customer:
  - 14.6.1. Undertakes to sign and/or complete any documentation or provide any information which the Supplier may reasonably require to obtain perfection of the Security Interest and/or registration of a Financing Statement or Financing Change Statement on the PPSR. The Customer warrants that information supplied to the Supplier will be complete, accurate and up to date and indemnifies the Supplier against any loss incurred if the information is not complete, accurate or up to date;
  - 14.6.2. Agrees not to register a Financing Statement under Section 10 of the PPSA or make a demand to alter the Financing Statement under Section 178 of the PPSA without the prior written consent of the Supplier;
  - 14.6.3. Undertakes to give the Supplier fourteen (14) days written notice of any change or proposed change to the Customer's business name or structure, postal address (residential or business), contact details (including telephone numbers and email addresses);
  - 14.6.4. Agrees to indemnify the Supplier against any and all costs reasonably incurred by the Supplier in perfecting and maintaining the Security Interest in the Goods or other applicable personal property under the PPSA and in respect of any and all costs incurred in the course of enforcing any of its rights or remedies under the PPSA;
  - 14.6.5. Agrees to waive the right to receive the Verification Statement in respect of any Financial Statement or Financing Interest Statement relating to the Security Interest under Section 157 of the PPSA;
  - 14.6.6. Agrees and undertakes to procure from any persons considered by the Supplier to be relevant to its security position such agreement or waivers that the Supplier may at any time require;
  - 14.6.7. Agrees to waive any rights of enforcement under Section 115 in respect of collateral not used predominantly for personal, domestic or household purposes;

- 14.7. The following provisions confer rights and remedies to the Supplier which may be invoked in order to seize, take possession or apparent possession, retain, purchase, sell, dispose or otherwise deal with Goods. The customer acknowledges that the Supplier may exercise these rights in any manner which it deems fit, in its absolute discretion: Sections 123 (Seizing Collateral); 126 (Apparent Possession); 128 (Secured Party may Dispose of Collateral); 129 (Disposal by Purchase); 134(1) (Retention of collateral).

## **15. TERMINATION AND CANCELLATION**

### **Cancellation by Supplier**

- 15.1. The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods at any time before payment is made by the Customer by giving written notice to the Customer. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
- 15.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- 15.2.1. Any money payable to the Supplier becomes overdue; or
- 15.2.2. 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
- 15.2.3. 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 Customer**

- 15.3. Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
- 15.4. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.5. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched.
- 15.6. The Supplier acknowledges that in the event the Supplier contravenes any of the terms of this Agreement, then clauses 15.3, 15.4 and 15.5 will not apply.

## **16. SET-OFF**

- 16.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 16.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

## **17. INSURANCE**

- 17.1. The Supplier is not liable to provide any insurance cover in relation to the provision of the Goods. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

## **18. AGREED USE**

- 18.1. The Customer acknowledges that the Customer may forfeit any rights if any, he may have against the Supplier if:
- 18.1.1. The Goods are applied for any other use to which the Goods are not intended for or not in accordance with the instructions provided by the Supplier;
- 18.1.2. Any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by an authorised repairer.
- 18.2. The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servants and/or agents in relation to all such claims.

## **19. JURISDICTION**

- 19.1. This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

## **20. PRIVACY ACT 1988**

- 20.1. The Customer and/or the Guarantor/s agrees;
- 20.1.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
- 20.1.2. That the Supplier may exchange information about the Customer and the Guarantor/s 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.

20.1.3. The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

## **21. INTELLECTUAL PROPERTY**

- 21.1. The Customer warrants that it shall not, whether directly or indirectly, infringe or allow any party to infringe on any intellectual property rights in relation to the Goods provided.
- 21.2. The Customer hereby indemnifies and agrees to keep indemnified the Supplier against all direct, indirect, special or consequential losses, liability, and or expenses incurred by the Supplier in relation to and/or in any way related with any breach of intellectual property rights by the Customer in relation to the Goods supplied.

## **22. ENTIRE AGREEMENT**

- 22.1. These Terms and Conditions as defined in Clause 3.1 constitute the whole Agreement made between the Customer and the Supplier.
- 22.2. This Agreement can only be amended in writing signed by each of the parties.
- 22.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 22.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.