



STANDARD QUOTATION TERMS AND CONDITIONS OF TRADE

Terms and Conditions

The following Terms and Conditions shall govern the commercial relationship between Tintuppa Horticultural Pty Ltd (ABN 32 103 680 708) and the client named on page 1 of the Quotation:

Definitions

1. In this Agreement unless the contrary intention appears:

“**Agreement**” means and comprises of the Terms and Conditions of this agreement which includes the presentation of the Quotation, your acceptance of/approval for Tintuppa to proceed with the Works.

“**Goods**” means any product required and set out in the Quotation or incidental to the completion of the Quotation at the prices set out therein or as varied from time to time by the reasonable market value.

“**Parties**” means you and Tintuppa.

“**Quotation**” means the quoted scope of Works contained in the document prepared by Tintuppa upon your request and instructions.

“**Relevant Laws**” means all applicable Federal, State and Municipal laws including without limitation all laws relating to building and planning compliance.

“**Tintuppa**” means Tintuppa Horticultural Pty Ltd (ABN 32 103 680 708) and excludes independent contractors.

“**Variation Notice**” means a notice issued by Tintuppa amending a Quotation to include any variance required to complete the Works in the Quotation or any variance requested by you.

“**Works**” means any and all works of any scale including without limitation maintenance, earthworks, gardening, landscaping, cleaning, regulatory advice, design and planning and any associated labour, goods or services to be completed by Tintuppa.

“**you**” or “**your**” means the client named on page 1 of this Quotation.

Quotation

2. This Quotation constitutes an offer by Tintuppa to you for the provision of Works. The offer made in this Quotation by Tintuppa is subject to these Terms and Conditions. You may accept this offer by notifying Tintuppa and paying the deposit set out in Schedule 2. By accepting this offer you accept these Terms and Conditions.
3. Prices quoted for the Works are valid for the time period specified in Schedule 1 of the Quotation.

4. Upon acceptance of the Quotation the price becomes valid for the time period specified in Schedule 1 of the Quotation.
5. Tintuppa reserves the right to substitute any plant or material with another of equal value and of suitable growth, habitat, colour and quality to comply with the specifications set out in the Quotation.
6. The Quotation may be altered if any variance is required to complete the Works in the Quotation or you request any change to the Works.
7. No change to a Quotation shall take effect until a Variation Notice is signed by both Parties.
8. Unless otherwise specified all Quotations are inclusive of GST.

Payments

9. All payment of fees shall be due and payable upon receipt of a Tintuppa invoice rendered to you in respect of the completed portion of the Works or in accordance with Schedule 2 of the Quotation.
10. If you default in payment of such fees, Tintuppa reserves the right, without prejudice to any other remedy available to it, to suspend further performance under this Agreement until such payment is made. Tintuppa may also recover all costs and expenses reasonably incurred in the recovery of any money owing by you to it including by not limited to all legal fees, process server's charges and collection agent's expenses.
11. Tintuppa may request at its discretion request interim payments against Works completed or goods supplied. These amounts will be deducted from any outstanding amount owed to Tintuppa.
12. Time is of the essence of this Agreement and any breach of a payment deadline shall be deemed to be a breach of an essential term of this Agreement.
13. If you fail to make any payments due to Tintuppa on time the balance due will accrue compound interest at the rate of 19.00% per annum.

Access and Services

14. Unless otherwise arranged with Tintuppa prior to quoting, you agree to provide Tintuppa at no charge:
 - (a) water and electricity sufficient to complete the Works;
 - (b) access to the site during normal Tintuppa working hours; and
 - (c) an area for storage of materials to be used during the conduct of the Works.

Compliance with all Relevant Laws

15. You acknowledge that whilst Tintuppa will conduct all necessary enquiries to ensure Works comply with all the Relevant Laws:
 - (a) if Tintuppa deems in its ultimate discretion that Works may require the permission of any relevant authority the costs of making such application or of obtaining such permission, unless otherwise included in the Quotation, shall be borne entirely by you; and
 - (b) if works are performed at the discretion of Tintuppa and Tintuppa may refuse to perform said Works if not fully satisfied that the Works will comply with the Relevant Laws;

Indemnification of Tintuppa

16. In so far as all applicable law permits, you will hold Tintuppa harmless and indemnify Tintuppa in respect of:
 - (a) any costs incurred or fines levied as a result of any breach of the Relevant Laws arising directly or indirectly from the Works, regardless of whether or not the Works have been performed by Tintuppa officers, employees or agents;
 - (b) any actions, claims, suits or demands made by any third party arising out of any damage or loss suffered by the third party as a result of the use of any Tintuppa product;
 - (c) any claim arising as a result of Works that have been carried out as directed by you on any land that is not in your ownership; and
 - (d) any damage to (or cost involved with) any underground hazards, obstructions or services not made known to Tintuppa in writing or apparent on visual inspection.
17. In the event that Tintuppa is found to be in breach of any condition, warranty, representation, liability or obligation or found to be liable to you for any matter relating to or arising in connection with the supply of Works:
 - (a) the liability of Tintuppa in respect of such breach, will be limited at the option of Tintuppa to the re-supply of the relevant goods and/or the payment of the cost of having the relevant goods re-supplied; and
 - (b) the amount of damages you will be entitled to recover from Tintuppa will be limited to the amount paid by you.

Goods supplied

18. Risk in any goods associated with Works to be completed passes to you on delivery but ownership in the goods supplied by Tintuppa remains the property of Tintuppa until you have discharged all outstanding indebtedness whether in respect of those goods or otherwise. You will allow Tintuppa and Tintuppa will be entitled to enter your premises and remove the goods at any time prior to payment in full being received.
19. Where Tintuppa delivers goods to you, delivery is deemed to take place on receipt by you at your nominated address. Where you elect to pick up goods from Tintuppa, delivery is deemed to take place when the goods leave the premises of Tintuppa. Pallets and containers of any kind supplied with goods are not sold and do not become your property. Pallets and containers of any kind must be exchanged at point of delivery or returned when the goods no longer require transportation.
20. No claims levied against Tintuppa in relation to loss or damage of goods will be considered unless all amounts owing by you to Tintuppa have been paid in full or lodged in Tintuppa's

nominated solicitors' trust account by way of security against non-payment.

21. Tintuppa is not under any obligation to accept goods returned by you and will do so only on terms to be agreed in each case. Returns must be made to the location nominated by Tintuppa and must be sent freight paid.
22. Unless an applicable maintenance agreement is in existence following completion of Works, Tintuppa will not be responsible for the well being and maintenance of vegetation including all types of living plant material.
23. Tintuppa will not be responsible for any damage through the elements, including drought, winds, rain and frost to any goods including living plants at any stage during and after completion of the Works.
24. Tintuppa agrees to pass any manufacturer's warranty extended to Tintuppa to you.

Interpretation

25. In this Agreement, unless the contrary intention appears:
 - (a) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
 - (b) a reference to the singular includes the plural and vice versa;
 - (c) a reference to a "person" includes an individual, a body corporate, a trust, an agency and other body;
 - (d) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.

Enforcement

26. If any provisions of these terms are found to be unenforceable for any reason then that provision will be read down to the extent of the unenforceability or severed from these terms and will not affect the enforceability of any other of these terms and conditions.
27. This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded. No modification or alteration of any clause of this Agreement will be valid except in writing signed by each party or by Variation Notice signed by each party.
28. If more than one party is named as Tintuppa's client your liability under this Agreement will be joint and several.
29. The laws applicable to this Agreement are the laws of the State of Victoria and both Tintuppa and you agree to submit to the jurisdiction of the Courts of that State.
30. Tintuppa reserves the right to amend these Terms and Conditions at any time.
31. All or any special conditions, of which Tintuppa has been informed are contained in Schedule 3 of the Quotation.