

CONDITIONS OF SUPPLY AND TRANSPORT– GLENARA TRANSPORT PTY LTD

1. DEFINITIONS AND INTERPRETATION

1.1 The meanings of the terms used in this agreement are set out below.

| Term | Meaning |
|----------------------------------|--|
| Australian Consumer Law | Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) |
| Authorised Representative | a director of the Supplier |
| Claim | includes all actions, suits, causes of action, arbitrations, claims, demands, proceedings, complaints and objections in respect of any debts, dues, costs, expenses, obligations, liabilities, interest, verdicts, orders or judgments either at law or in equity or arising under a statute and irrespective of whether the matters giving rise to those claims are known to the parties as at the date of the supply of Goods pursuant to these Conditions |
| Consequential Loss | loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any form of special, indirect, punitive or exemplary loss or damages, however it arises |
| Consumer | the same meaning as in the Australian Consumer Law |
| Contamination | contamination of any kind including, but not limited to contamination by moisture, rocks, foreign materials, seeds, animal droppings and chemical spray |
| Customer | the Supplier's customer including the customer's employees, agents, subcontractors, successors, assignees or any entity claiming through or under the Customer |
| Delivery Docket | the Supplier's delivery docket |
| Goods | the materials supplied or to be supplied under these Conditions including but not limited to Natural Product |
| GST Act | the <i>New Tax System (Goods and Services) Tax Act 1999</i> (Cth) |
| Natural Product | materials comprising but not limited to softfall, sawdust/pine shavings, pine mulch, compost, pine shavings, rice hulls, bark and any other Natural Product |
| Order | a Customer's request to the Supplier to purchase Goods from the Supplier |
| Price | the price for supply of the Goods and any transport of the Goods |
| Quotation | a quotation (whether oral or in writing) by the Supplier stating the price to supply the Goods in accordance with these Conditions |
| Site | the location for supply of the Goods |
| Supplier | Glenara Transport Pty Ltd (ACN 084 343 484) |
| Supplier's Personnel | the Supplier's employees, agents and subcontractors |
| Supplier's Rates | the rates of the Supplier as amended from time to time |
| Taxable Supply | the same meaning as in the GST Act |

1.2 In these Conditions:

- words in the singular include the plural and vice versa;
- words indicating any gender indicate the appropriate gender;
- where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- references to any document (including these Conditions) include references to the document as amended, consolidated, supplemented, novated or replaced;
- a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- monetary references are references to Australian currency; and
- headings are included for convenience only and do not affect interpretation of this agreement.

2. AGREEMENT

- These Conditions apply to and form part of any agreement between the Supplier and the Customer for the supply of Goods.
- The Customer's Order must be made verbally, by email or by post to the Supplier.
- These Conditions (and any credit application completed by the Customer and credit guarantees, if applicable) govern the entire relationship between the Supplier and the Customer in connection with the supply of Goods and will prevail over any other document (including but not limited to purchase order terms or procurement terms provided by the Customer) to the extent of any inconsistency with these Conditions.

2.4 Any variation or purported variation of these Conditions (including any special terms and conditions) will not apply unless agreed to by an Authorised Representative in writing.

2.5 The Supplier may subcontract the performance of its obligations to the Customer.

3. NATURAL PRODUCT

- If the Goods comprise Natural Product, the Supplier will not be liable for any Contamination.
- If the Customer or any third party manufactures a new product mix which incorporates any of the Supplier's Natural Product, the Supplier does not warrant the quality or performance of the new product mix and is not liable for any Claim arising from or in any way connected with the supply of the new product mix.

4. WARRANTIES

4.1 To the extent permitted by law, the Supplier gives no warranties or guarantees, either express or implied, as to merchantability, fitness for purpose or otherwise of any Goods.

5. POINT OF SUPPLY

5.1 Quotations for the supply of Goods are based on all-Natural Product being available from the Supplier's normal point of supply (as determined by the Supplier).

6. RISK

- The Goods will be entirely at the risk of the Customer after despatch to the Customer or the Customer's agent or delivery to a carrier nominated by the Customer.
- If the Supplier delivers the Goods to a carrier (other than the Supplier) for transportation, it does so as agent for the Customer and the Customer agrees that the Supplier has no liability to the Customer for any delay in transportation or for the loss of or damage to the Goods or any part of the Goods during loading, unloading or transit or for any Consequential Loss.
- If the Supplier agrees to deliver or in fact delivers the Goods to the Site:
 - The Goods remain at the Customer's risk at all times; and
 - The Supplier excludes all liability to the Customer for, and the Customer agrees to indemnify and to keep the Supplier indemnified against all and any Claims by any person (including the Customer) in relation to any loss, damage, misdelivery, delay, deterioration, contamination or failure to deliver the Goods, whether arising because of breach of contract, or in bailment, tort (including negligence) or otherwise.
- The Supplier is entitled to the benefit of the exclusion of liability provided for in clause 6.3 even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

7. SUPPLIER'S LIABILITY

- The Supplier will not be liable for any defect or other fault which may develop in the Natural Product due to faulty handling or storage of the Natural Product by the Customer or any other person.
- The Supplier will not be liable for any Claim arising from or in connection with any delay or non-delivery of Goods arising out of any event whatsoever, including, but not limited to:
 - plant or equipment breakdown; or
 - unavailability or shortage of any Goods.
- Notwithstanding any other provision of these Conditions, the Supplier will, under no circumstances, be liable for any Claim for Consequential Loss.

8. LIABILITY OF SUPPLIER'S PERSONNEL

- Every exemption, limitation, condition and liberty to which the Supplier is entitled under these Conditions will also be available and will extend to protect all Supplier's Personnel.
- For the purposes of clause 8.1 the Supplier is or will be deemed to be acting as agent or trustee on behalf of all Supplier's Personnel and all Supplier's Personnel will, to this extent, be or be deemed to be parties to these Conditions.

9. SITE ACCESS & DELIVERY

- If the Supplier agrees to deliver the Goods to the Site:
 - the Customer will be responsible for the safety of the Site and for providing safe, adequate, and timely access to the Site for the Supplier's Personnel and equipment and the Customer will indemnify the Supplier for any Claim arising from or in connection with any failure to provide a safe Site or safe access;

- (b) The driver making any delivery may refuse to complete the delivery, if not satisfied with the Customer's compliance with clause 9.1(a); however, effecting delivery will not constitute assessment of the safety of the Site and in no way, relieves the Customer of its obligations under these Conditions; and
- (c) the Goods must be accepted by the Customer and unloading of the Goods completed as soon as possible after arrival of the Supplier's delivery vehicle at the Site.

10. PRICE AND PAYMENT

- 10.1 The Price payable by the Customer for the supply of Goods will be based on the Supplier's Rates in accordance with the actual quantities supplied as shown on the Delivery Docket, subject to these Conditions. Immediately after delivery the Customer will sign the Delivery Docket and, on signing, be bound by the information and price on the Delivery Docket.
- 10.2 Any Quotation provided by the Supplier to the Customer is based on the anticipated cost of transport, labour and materials and the Supplier may adjust the Quotation accordingly in the event of any variation to any of these costs that occurs before delivery.
- 10.3 If the Customer has a credit account with the Supplier, the Customer must pay the Price in accordance with the terms of its credit account with the Supplier.
- 10.4 If the Customer does not have a credit account with the Supplier, unless agreed otherwise by the Supplier in writing, the Customer must:
 - (a) pay the Price before the requested delivery date of the Goods (Advance Payment); and
 - (b) pay any increase or variation in Price in accordance with clause 10.2 within 7 days of delivery (Subsequent Payment).
- 10.5 If the Customer does not pay the Advance Payment before the requested delivery date, the Supplier may terminate the Order.
- 10.6 If the Customer fails to pay any Advance Payment or Subsequent Payment, without prejudice to any other right or remedy:
 - (a) interest will accrue at the rate of 1.5% per calendar month on the amount outstanding from time to time, compounding monthly, until the Goods and any associated delivery or other charges are paid in full; and
 - (b) the Customer must pay any legal costs (on an indemnity basis), collection costs or dishonoured cheque fees incurred in relation to any default in payment by the Customer.
- 10.7 If any payment made by the Customer is by cheque or electronic funds transfer, the Goods will not be considered as being paid for until clear funds have been received by the Supplier.
- 10.8 The Customer agrees that the Goods will be paid for in full without any retention or set-off.

11. LIMITATION OF LIABILITY

- 11.1 Subject to clause 12, the Supplier's total aggregate liability to the Customer in all circumstances is limited (to the extent permitted by law) to the amount paid or due by the Customer for the supply of Goods.

12. AUSTRALIAN CONSUMER LAW – GUARANTEES AND LIMITATION OF LIABILITY

- 12.1 Notwithstanding any other provision of these Conditions, the Supplier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the Australian Consumer Law or any other Commonwealth or state legislation in so far as such legislation may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 12.2 If the Customer is a Consumer and any of the Goods are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee under the Australian Consumer Law in relation to those Goods (other than a guarantee under sections 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities) of the Australian Consumer Law), is limited to, at the option of the Supplier, one or more of the following:
 - (a) the replacement of the Goods or the supply of equivalent goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the Goods repaired.

13. GST

- 13.1 Unless specified otherwise, the consideration payable by the Customer has been fixed without regard to the impact of GST and is exclusive of GST.
- 13.2 If GST is or becomes payable on a Taxable Supply made under or in connection with these Conditions, the Customer must pay an additional amount equal to the GST payable on the Taxable Supply.

14. DEFAULT

- 14.1 If the Customer breaches any of these Conditions, the Supplier may refuse to supply Goods to the Customer and may take whatever action against the Customer it considers appropriate to recover any loss that the Supplier has incurred or suffered as a result of that breach.

15. FORCE MAJEURE

- 15.1 The Supplier will not be liable for any breach of these Conditions arising from any act, event or omission or cause beyond the Supplier's control including but not limited to an Act of God, insurrection or civil disorder or disturbance, strikes, lockouts, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, industrial disputes of any kind (whether or not involving the Supplier's employees), fire, lightning, explosion, flood, subsidence, inclement weather, acts or omissions of persons or bodies for whom neither the Supplier nor the Supplier's Personnel are responsible, or any other cause outside the control of the Supplier or the Supplier's Personnel.

16. NOTIFICATION OF CLAIM

- 16.1 Notwithstanding any other provision of these Conditions (other than clause 12), the Supplier will in any event be discharged from all liability whatsoever in respect of the Order and the supply of the Goods unless written notice of a claim or an intended claim (together with particulars of the claim and the circumstances on which the claim is based) is given to the Supplier within seven days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery of the Goods would have been effected.
- 16.2 A failure by the Customer to give notice of a claim or intended claim under clause 16.1 will be deemed to be conclusive evidence that the supply of Goods and the Goods themselves are accepted by the Customer as in all respects satisfactory and in compliance with these Conditions.

17. NOTICES

- 17.1 All notices given under these Conditions must be in writing and may be delivered in person or by post or sent by email.
- 17.2 A party may change its particulars for service by notice in writing to the other party.
- 17.3 A notice sent by post will be deemed received six days after posting.
- 17.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.
- 17.5 For the purposes of clause 17.4, 'delivery' of an email means the time that an email reaches the recipient's server.

18. GENERAL

- 18.1 These Conditions are governed by and construed according to the laws in force in South Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of South Australia.
- 18.2 No amendment to this agreement has any force unless it is in writing.
- 18.3 This agreement represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.
- 18.4 If any part of these Conditions is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and this agreement will remain otherwise in full force.
- 18.5 Any reference to a party in this agreement includes, and any obligation or benefit under this agreement will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.
- 18.6 An obligation of two or more persons under this agreement binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this agreement will take effect for the benefit of those persons jointly and severally.
- 18.7 Time will be of the essence as regards a date or period determined under this agreement except that a date or period may be altered by agreement in which case time will be of the essence for date or period as altered.
- 18.8 The failure of a party to these Conditions to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.