

## AGrowQuip NZ Limited – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "AGrowQuip" shall mean AGrowQuip NZ Limited, its successors and assigns or any person acting on behalf of and with the authority of AGrowQuip NZ Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by AGrowQuip to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by AGrowQuip to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by AGrowQuip to the Client.
- 1.5 "Services" shall mean all services supplied by AGrowQuip to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between AGrowQuip and the Client in accordance with clause 4 of this contract.
2. **Consumer Guarantees Act 1993**
- 2.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by AGrowQuip to the Client.
3. **Acceptance**
- 3.1 Any instructions received by AGrowQuip from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by AGrowQuip shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Goods.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of AGrowQuip.
- 3.4 The Client shall give AGrowQuip not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by AGrowQuip as a result of the Client's failure to comply with this clause.
- 3.5 Goods are supplied by AGrowQuip only on the terms and conditions of trade herein to the exclusion of any terms that purport to override these terms and conditions of trade.
4. **Price and Payment**
- 4.1 At AGrowQuip's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by AGrowQuip to the Client in respect of Goods supplied; or
  - (b) AGrowQuip's quoted Price (subject to clause 4.2) which shall be binding upon AGrowQuip provided that the Client shall accept AGrowQuip's quotation in writing within thirty (30) days.
- 4.2 AGrowQuip reserves the right to change the Price in the event of a variation to AGrowQuip's quotation. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases in the cost of materials and labour) will be charged for on the basis of AGrowQuip's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At AGrowQuip's sole discretion:
  - (a) a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable; and/or
  - (b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.4 Time for payment for the Goods 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.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and AGrowQuip.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
5. **Delivery of the Goods**
- 5.1 At AGrowQuip's sole discretion delivery of the Goods shall take place when:
  - (a) the Client takes possession of the Goods at the Client's address; or
  - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by AGrowQuip or AGrowQuip's nominated carrier); or
  - (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 5.2 At AGrowQuip's sole discretion the costs of delivery are:
  - (a) included in the Price; or
  - (b) in addition to the Price and, where applicable, charged to the Client's account.
- 5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.4 The failure of AGrowQuip to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 AGrowQuip shall not be liable for any loss or damage whatsoever due to failure by AGrowQuip to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of AGrowQuip.
6. **Risk**
- 6.1 If AGrowQuip retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, AGrowQuip is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AGrowQuip is sufficient evidence of AGrowQuip's rights to receive the insurance proceeds without the need for any person dealing with AGrowQuip to make further enquiries.
7. **Title**
- 7.1 AGrowQuip and Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid AGrowQuip all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to AGrowQuip in respect of all contracts between AGrowQuip and the Client.
- 7.2 Receipt by AGrowQuip of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then AGrowQuip's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until AGrowQuip shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from AGrowQuip to the Client AGrowQuip may give notice in writing to the Client to return the Goods or any of them to AGrowQuip. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Client is only a bailee of the Goods and until such time as AGrowQuip has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to AGrowQuip for the Goods, on trust for AGrowQuip; and
  - (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that AGrowQuip will be the owner of the end products; and
  - (e) if the Client fails to return the Goods to AGrowQuip then AGrowQuip or AGrowQuip's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and AGrowQuip will not be liable for any reasonable loss or damage suffered as a result of any action by AGrowQuip under this clause.
8. **Personal Property Securities Act 1999 ("PPSA")**
- 8.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by AGrowQuip to the Client (if any) and all Goods that will be supplied in the future by AGrowQuip to the Client.
- 8.2 The Client agrees that:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AGrowQuip may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, AGrowQuip for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of AGrowQuip; and
  - (d) immediately advise AGrowQuip of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.3 AGrowQuip and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by AGrowQuip, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Client shall unconditionally ratify any actions taken by AGrowQuip under clauses 8.1 to 8.5.
9. **Defects**
- 9.1 The Client shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify AGrowQuip of any alleged defect, shortage in quantity, damage or failure to comply with the description. The Client shall afford AGrowQuip an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which AGrowQuip has agreed in writing that the Client is entitled to reject, AGrowQuip's liability is limited to either (at AGrowQuip's discretion) replacing the Goods or repairing the Goods.
10. **Returns**
- 10.1 Returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 9.1; and
  - (b) AGrowQuip has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned, accompanied by a copy of the original invoice, at the Client's cost within twenty-four (24) days of the delivery date; and
  - (d) AGrowQuip will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.2 AGrowQuip may (in its discretion) accept the return of Goods for credit, but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods, plus any freight.
- 10.3 Under no circumstances will credit be allowed on returned electrical or electronic Goods, non-stockist or reworked items, trims, or Goods made at the Client's request or to the Client's specifications.
11. **Warranty**
- 11.1 For Goods not manufactured by AGrowQuip, the warranty shall be the current warranty provided by the manufacturer of the Goods. AGrowQuip shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 11.2 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by AGrowQuip as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. AGrowQuip shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
12. **Intellectual Property**
- 12.1 Where AGrowQuip has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in AGrowQuip, and shall only be used by the Client at AGrowQuip's discretion.
- 12.2 The Client agrees that all designs or instructions to AGrowQuip will not cause AGrowQuip to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify AGrowQuip against any action taken by a third party against AGrowQuip in respect of any such infringement.
13. **Default and Consequences of Default**
- 13.1 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 a half percent (2.5%) per calendar month (and at AGrowQuip's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by AGrowQuip.
- 13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify AGrowQuip from and against all costs and disbursements incurred by AGrowQuip in pursuing the debt including legal costs on a solicitor and own client basis and AGrowQuip's collection agency costs.
- 13.4 Without prejudice to any other remedies AGrowQuip may have, if at any time the Client is in breach of any obligation (including those relating to payment) AGrowQuip may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. AGrowQuip will not be liable to the Client for any loss or damage the Client suffers because AGrowQuip has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to AGrowQuip's other remedies at law AGrowQuip shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AGrowQuip shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to AGrowQuip becomes overdue, or in AGrowQuip's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client 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 Client or any asset of the Client.
14. **Security and Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which AGrowQuip may have however:
  - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to AGrowQuip or AGrowQuip's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that AGrowQuip (or AGrowQuip's nominee) shall be entitled to the lodge when the Client's other obligations under the terms and conditions. AGrowQuip will not be liable for any monetary obligations payable hereunder have been met.
  - (b) should AGrowQuip elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify AGrowQuip from and against all AGrowQuip's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint AGrowQuip or AGrowQuip's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
15. **Cancellation**
- 15.1 AGrowQuip may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice AGrowQuip shall repay to the Client any sums paid in respect of the Price. AGrowQuip shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by AGrowQuip (including, but not limited to, any loss of profits) up to the time of cancellation.
16. **Privacy Act 1993**
- 16.1 The Client and the Guarantor/s (if separate to the Client) authorises AGrowQuip to:
  - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
  - (b) disclose information about the Client and/or Guarantors, whether collected by AGrowQuip from the Client and/or Guarantors directly or obtained by AGrowQuip from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.
- 16.2 Where the Client and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Client and/or Guarantors shall have the right to request AGrowQuip for a copy of the information about the Client and/or Guarantors retained by AGrowQuip and the right to request AGrowQuip to correct any incorrect information about the Client and/or Guarantors held by AGrowQuip.
17. **Unpaid Seller's Rights**
- 17.1 Where the Client has left any item with AGrowQuip for repair, modification, exchange or for AGrowQuip to perform any other Service in relation to the item and AGrowQuip has not received or been tendered the whole of the Price, or the payment has been dishonoured, AGrowQuip shall have:
  - (a) a lien on the item;
  - (b) the right to retain the item for the Price while AGrowQuip is in possession of the item;
  - (c) a right to sell the item.
- 17.2 The lien of AGrowQuip shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
18. **Client's Disclaimer**
- 18.1 The Client hereby disclaims any right to rescind, or cancel any contract with AGrowQuip or to sue for damages or to claim restitution arising out of a contract or misrepresentation made to the Client by AGrowQuip and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
19. **General**
- 19.1 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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 19.3 AGrowQuip shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by AGrowQuip of these terms and conditions.
- 19.4 In the event of any breach of this contract by AGrowQuip the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by AGrowQuip nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 AGrowQuip may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 AGrowQuip reserves the right to 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 AGrowQuip notifies the Client of such change.
- 19.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 19.9 The Client shall not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.10 The failure by AGrowQuip to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AGrowQuip's right to subsequently enforce that provision.