

Nature Playgrounds – Terms & Conditions of Trade

<p>without the need for any person dealing with NP to make further enquiries.</p> <p>(d) The Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for NP and must pay or deliver the proceeds to NP on demand.</p> <p>(e) The Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of NP and must sell, dispose of or return the resulting product to NP as it so directs.</p> <p>(f) unless the Materials have become fixtures the Client irrevocably authorises NP to enter any premises where NP believes the Materials are kept and recover possession of the Materials.</p> <p>(g) NP may recover possession of any Materials in transit whether or not delivery has occurred.</p> <p>(h) the Client shall not charge or grant an encumbrance over the Materials nor grant or otherwise give away any interest in the Materials while they remain the property of NP.</p> <p>(i) NP may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.</p> <p>15. Personal Property Securities Act 2009 ("PPSA")</p> <p>15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to NP for Works – that have previously been supplied and that will be supplied in the future by NP to the Client.</p> <p>15.3 The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which NP may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, NP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of NP;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of NP;</p> <p>(e) immediately advise NP of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.</p> <p>15.4 NP and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>15.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>15.7 Unless otherwise agreed to in writing by NP, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>15.8 The Client shall unconditionally ratify any actions taken by NP under clauses 15.3 to 15.5.</p> <p>15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>16. Security and Charge</p> <p>16.1 In consideration of NP agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>16.2 The Client indemnifies NP from and against all NP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NP's rights under this clause.</p> <p>16.3 The Client irrevocably appoints NP and each director of NP as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.</p> <p>17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>17.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of</p>	<p>delivery notify NP in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow NP to inspect the Materials or to review the Works provided. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>NP acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, NP makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. NP's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>If the Client is a consumer within the meaning of the CCA, NP's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>If NP is required to replace any Materials under this clause or the CCA, but is unable to do so, NP may refund any money the Client has paid for the Materials.</p> <p>If NP is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then NP may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.</p> <p>If the Client is not a consumer within the meaning of the CCA, NP's liability for any defect or damage in the Materials is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by NP at NP's sole discretion;</p> <p>(b) limited to any warranty to which NP is entitled, if NP did not manufacture the Materials;</p> <p>(c) otherwise negated absolutely.</p> <p>Subject to this clause 17, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 17.1; and</p> <p>(b) NP has agreed that the Materials are defective; and</p> <p>(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.</p> <p>Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, NP shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Materials;</p> <p>(b) the Client using the Materials for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) interference with the Works by the Client or any third party without NP's prior approval;</p> <p>(e) the Client failing to follow any instructions or guidelines provided by NP;</p> <p>(f) fair wear and tear, any accident, or act of God.</p> <p>Intellectual Property</p> <p>Where NP has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in NP, and shall only be used by the Client at NP's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of NP.</p> <p>The Client warrants that all designs, specifications or instructions given to NP will not cause NP to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify NP against any action taken by a third party against NP in respect of any such infringement.</p> <p>The Client agrees that NP may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which NP has created for the Client.</p> <p>Default and Consequences of Default</p> <p>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 NP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>If the Client owes NP any money the Client shall indemnify NP from and against all costs and disbursements incurred by NP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NP's contract default fee, and bank dishonour fees).</p> <p>Further to any other rights or remedies NP may have under this contract, if a Client has made payment to NP, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by NP under this clause 19 where it can be proven that such reversal is</p>	<p>found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.</p> <p>Without prejudice to NP's other remedies at law NP shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to NP shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to NP becomes overdue, or in NP's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by NP;</p> <p>(c) the Client becomes insolvent or bankrupt, 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</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>20. Cancellation</p> <p>Without prejudice to any other remedies NP may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions NP may suspend or terminate the supply of Works to the Client. NP will not be liable to the Client for any loss or damage the Client suffers because NP has exercised its rights under this clause.</p> <p>NP may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice NP shall refer to the Client any sums paid in respect of the Price, less any amounts owing by the Client to NP for Works already performed. NP shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by NP as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>21. Privacy Act 1988</p> <p>The Client agrees for NP to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by NP.</p> <p>The Client agrees that NP may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>The Client consents to NP being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>The Client agrees that personal credit information provided may be used and retained by NP for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Works; and/or</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Works.</p> <p>NP may give information about the Client to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Client including credit history.</p> <p>The information given to the CRB may include:</p> <p>(a) personal information as outlined in 21.1 above;</p> <p>(b) name of the credit provider and that NP is a current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and NP has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of NP, the Client has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>The Client shall have the right to request (by e-mail) from NP:</p>	<p>(a) a copy of the information about the Client retained by NP and the right to request that NP correct any incorrect information; and</p> <p>(b) that NP does not disclose any personal information about the Client for the purpose of direct marketing.</p> <p>NP will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>The Client can make a privacy complaint by contacting NP via e-mail. NP will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>22. Dispute Resolution</p> <p>22.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p>Construction Contracts Act 2004</p> <p>At NP's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Construction Contracts Act 2004 may apply.</p> <p>Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.</p> <p>Service of Notices</p> <p>Any written notice given under this contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>General</p> <p>The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.</p> <p>These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia in which NP has its principal place of business, and are subject to the jurisdiction of the courts in Western Australia.</p> <p>Subject to clause 17, NP 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 NP of these terms and conditions (alternatively NP's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).</p> <p>Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). NP may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of NP's sub-contractors without the authority of NP.</p> <p>The Client agrees that NP may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for NP to provide Works to the Client.</p> <p>Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p>
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Please note that a larger print version of these terms and conditions is available from NP on request.