

Terms and Conditions of Trade

PAVE & WALL PROTECTOR

1 Acceptance of **THE QUOTATION** (the final draft "Quote/Invoice" supplied) by **THE CLIENT** (the persons, company or corporation named (see "Name:") on the Quotation), assumes acceptance of **THE TERMS** (the Terms and Conditions of Trade – this document) of **THE CONTRACTOR** (Rod Jenkins; Trading As Pave and Wall Protector).

1.1 Verbal or written permission by the client to the Contractor or one of its employees or sub-contractors to commence the works is sufficient to assume acceptance of the Quotation and the Terms.

1.2 The quotation is valid for a one month period

2 The Contractor offers to the Client promptly and diligently, insofar as its other commitments allow, to proceed to complete and install **THE WORKS** (the description of work offered within the Quotation plus modified or additional works associated with this description) in accordance with the following terms:

3 Prior to the commencement of the Works the Client is to ensure:

a) The removal of obstacles, equipment, shelving, furniture, and other items from the surface and surrounding area where the Works are to be performed;

b) Ensure the Contractor has access to power, and access to water with a minimum water-flow of 21 litres per minute;

c) Ensure that sprinklers do not operate in the vicinity during the days of the Works and do not operate within 24 hours prior to the commencement of the Works and within 24 hours of the cessation of the works;

d) Ensure the Contractor has uninterrupted personnel and equipment access to the site of the Works, and to ensure that such access is available for personnel and equipment

e) Remove excess sand, leaves, and other materials from the surface of the Works

f) The Client is to meet the Contractor on site prior to the commencement of works to agree on the finished look and to discuss any issues that may arise from the Works, quality and safety of different types of sealers, and expectations of the cleaning and sealing process.

g) Should the client fail to meet on site, then you agree the contractor may proceed with work and you will not be able to dispute the sealer or finished look applied by us, nor withhold payment for any reason.

3.1 If the manufacturer, supplier, or installer of the substrate being treated has guidelines regarding the treatment, over-coating, or cleaning of the substrate, this must be provided to the Contractor prior to commencement of the Works.

3.2 The client acknowledges that substrates, such as paving, concrete, granite and limestone, have natural variances in colour and are effected by weather, location, lighting and can effloresce without control.

3.3 Should the Contractor's work procedures be slowed or inhibited as a result of failure to comply with these Terms, additional charges will apply.

3.4 The Contractor is not responsible for issues arising which relate in any way to the failure of the Client to comply with these Terms.

4 The Contractor will conduct the Works in a diligent and cautious manner, drawing from past experience of the products, similar products and the type of substrate to achieve the best result possible with the resources at hand, and any limitations that may exist.

4.1 The Contractor may find it needful to use his discretion to refrain from using certain products or methods, or change the approach to the completing of the job in any way if any of the following occurs during the job:

a) the products or methods begin to cause damage to the substrate, or nearby property, or risk causing such damage

b) it appears that the products or methods are not achieving the best result and it is assessed by the Contractor that the job be best completed with different products or methods.

c) unexpected circumstances such as but not limited to machinery break-downs, or adverse weather conditions

4.2 In the event that products or methods are altered during the

Works that the resultant finish of the cleaning or the finished product may be different to that described within the Quotation, but is not to be considered sub-standard workmanship.

4.3 You acknowledge that our Works involve high pressure cleaning, followed by air blowing, and then application of sealant.

4.4 The Contractor may use cleaning chemicals such as various acids, alkaline and bleaches in order to remove stains or prepare the substrate.

4.5 The client acknowledges that high pressure cleaning may result in a dirty swimming pool, windows, walls, doors or other parts of Your property, and while we will hose them down after the high pressure cleaning is completed, we do not wash and clean away any dirt left after hosing.

4.6 You acknowledge that while all care is taken by Us, We are not liable if high pressure cleaning or spraying of the sealer results in any plants being killed.

4.7 The Contractor will attempt to find a satisfactory medium between effective cleaning of the substrate and being cautious not to change the appearance of the substrate, but this is up to the Contractors judgment based on past experience.

4.8 The Client understands that sometimes stains or contaminants cannot be removed with The Contractor's products and processes, and in these instances, the product and existing stain will be sealed, unless the Contractor is requested otherwise in writing.

4.9 The Client understands that the sealants are water and stain resistant, not water and stain proof, and the avoidance of oils and other liquids from contact with the sealed substrate is recommended.

5.2 The Contractor reserves the right of discretion to vary the application or installation methods, processes, or quantities from manufacturer or supplier recommendations based on past experience and knowledge of the products, the substrate, site and environmental conditions, and the desired finish as described within the Quotation.

6 The Contractor recommends that the Client request a test sample to be conducted prior to the commencement of the Works.

6.1 This test sample is to be placed on the actual area and substrate where the Works are to be performed.

6.2 For this sample, the Contractor is to use products as close to the products on the Quotation as possible given limitations of stock ordering and availability and restrictions due to the smaller size of the sample area, however it is not reasonable to expect the Contractor to use the same application methods in the sample as over the entire area of the Works.

6.3 The Contractor may offer to complete the sample free of charge, however in circumstances where additional costs are incurred to the Contractor in order to perform a sample, these costs will be agreed upon prior to application and will reflect the costs of material, minimum order sizes, freight costs, time and labour expenses.

6.4 As this test sample is an attempt to discover potential problems such as penetration issues, product adherence, bubbling, product failure, damaging passage of moisture or gases, structural movement, and environmental factors that may cause product failure or flaws in the finish, it is not to be considered an exhaustive check or guaranteed safeguard against future problems arising.

6.5 The Contractor will perform this test sample over the area size desired by the Client, and will leave the sample in place for the length of time desired by the Client.

6.6 Due to the unpredictability of many substrates, it is to be understood that neither the sample area itself, nor the success or longevity of the sample area, is a guarantee by the Contractor that the remainder of the Works will have the same result.

6.7 Due to many of the Contractor's products being either natural in appearance, or resin or chemical based products, and in some cases because of different application methods, it is to be understood that there will likely be inconsistencies between the sample area and the remainder of the area of the Works.

7 The Contractor is responsible for the quality of workmanship carried out and is to complete the Works in accordance with the Quotation.

7.1 Workmanship can be determined to be sub-standard if it greatly varies from the Quotation due to error on behalf of the Contractor or its employees or sub-

contractors, but liability for the repair or replacement of the product or service is limited to occasions where adverse or unexpected environmental conditions and/or unknown substrate contaminants, moisture, passage of gases or other substances are not present as factors contributing to either the Contractor's product selection or work methods or to the performance of the installed or applied products.

7.2 The Contractor does not offer any warranty on the Works or products provided, but upon request will disclose the product name and manufacturer that the Client may request a warranty directly from the supplier or manufacturer.

7.3 Because the Contractor is not the manufacturer of the products used, and in the instance of product failure or poor performance or Client dissatisfaction with the product or finish, the Contractor is not liable for the repair, replacement, or any other resultant damages, but may offer to the Client a further Quotation to modify, repair, or replace the products or services.

7.4 Repairs to defective finishes as a result of error on behalf of the Contractor will, where possible, be repaired, painted or over-coated, rather than completely removed and re-applied.

4.5 A painted or repaired finish is considered under these Terms to be an acceptable finish, accept for the scenario that such finishes would create an ugly or highly unusual finish.

8 The Client understands that the Contractor may employ staff, sub-contractors, or other firms to conduct the Works without notice.

8.1 The Client also understands that the Terms extend to such staff, sub-contractors and firms, and apply to all the Works undertaken or commissioned by the Contractor.

9 In instances where the Contractor has employed the services of a sub-contractor or firm to carry out the Works or a portion of the Works, this same sub-contractor or firm has assumed responsibility for the completion of the Works in accordance with the Quotation, and is solely liable for such Works.

9.1 In the event that the completed Works are not within a reasonable comparison to the Quotation, the sub-contractor or firm employed to do such is the responsible party for the repair or replacement of the product.

9.2 Liability is limited to the repair and replacement of the product.

10.1 The payment terms of the contractor are payment on completion, unless otherwise requested and agreed in writing.

10.2 Once the Works have been completed, the Quotation becomes the invoice from which payment is immediately due. The outstanding balance can be paid via the means described within the Quotation, plus or minus any cost adjustments arising from the Works.

10.3 Deposits and part-payments paid by the Client to the Contractor are non-refundable.

10.4 Should the Client verbally or in writing instruct the Contractor to proceed with the Works and at a later time cancel these instructions, the Client must ensure that the Contractor receives such notice not less than 24 hours prior to the commencement date of the Works.

10.5 The fee payable by the Client to the Contractor for failing to provide a minimum of 24 hours notice of cancellation of instructions to commence the Works is \$70 plus GST.

10.6 The cancellation fee described in 10.5 will be provided via invoice and is subject to these Terms.

11 Not less than seven days after the commencement of the Works, and at intervals of not less than seven days thereafter, the Contractor may state interim accounts as between itself and the Client requiring payment in respect of the progress which has been made in the Works, called hereafter "progress claims."

12 The Client hereby indemnifies the Contractor against all claims that may be brought by third parties against the Contractor in relation to any loss or damage to property or injury or death arising out of or in relation to the Works.

13 The Quotation is governed by the following limitations which may affect its accuracy: You warrant to us in requesting a quotation that:

a) There are no external factors which could affect our efficient carrying out of the Works, including but not limited to inappropriate or incorrect installation of any service, appliances, plant or equipment.

b) There are no property defects not evident by visual inspection which might reasonably affect this quotation.

14 In case any difference or dispute arises between the Client and the Contractor as to anything in connection to the Works (except a claim of unpaid debts), then either party shall give to the notice in writing of such dispute and after 7 days, unless it shall otherwise have been settled, such dispute shall and is hereby submitted to the arbitration of the president for the time being of the WA law society or his nominee, in accordance with the *Commercial Arbitration Act 1985 (WA)*.

15 At the time of serving the Notice of Dispute the party serving such notice shall provide evidence of the deposit with the Secretary of WA Law Society, of \$1000 by way of security for costs of the arbitration proceedings.

16 If the Client shall not pay to the Contractor the amount due within 14 days of practical completion of the Works any money he might owe to the Contractor:

17 The Client must pay to the Contractor liquidated damages in respect of the administrative effort of recovery of debt at the rate of \$85 per hour or part thereof spent on any task involved in recovering the debt; and

18 The Contractor shall be entitled to register a caveat against the land on which any of the Works have been done as if the Worker's Lien Act 1893 (South Australia) applied in Western Australia, and interest shall accrue on the amount due at a rate which is exactly double the rate set from time to time under s 8AAD(1) *Taxation Administration Act 1953* (Cth).

19 The Contractor is bound by the Privacy Act 1988. In consideration of the Contractor not requiring a bank guarantee in respect of the Works, the Client covenants that the Contractor may collect personal information from the Client or third parties such as personal details, contact details, financial information, and transaction information relevant to the current business transaction.

19.1 The Contractor may use the Client's personal information to carry out its business, comply with its legal requirements, and in the event that the Contractor deems that the Client has committed any default in payment, to disclose personal information to a credit reporting agency or to members of the Contractor's trade association and the CLIENT HEREBY SPECIFICALLY AUTHORISES SUCH DISCLOSURE.