

Advance Landscape Systems Limited – Terms & Conditions of Trade

1. Definitions	9. Title	16. Cancellation
1.1 "ALSL" means Advance Landscape Systems Limited, its successors and assigns.	9.1 ALSL and the Customer agree that ownership of the Goods shall not pass until:	16.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
1.2 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.	(a) ALSL has paid ALSL all amounts owing to ALSL; and	If ALSL, due to reasons beyond ALSL's reasonable control, is unable to deliver any Goods and/or Services to the Customer, ALSL may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice ALSL shall repay to the Customer any money paid by the Customer for the Goods and/or Services. ALSL shall not be liable for any loss or damage whatsoever arising from such cancellation.
1.3 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using ALSL's website, then the Customer shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.	(b) the Customer has met all of its other obligations to ALSL.	16.2 The Customer may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract. Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
1.4 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting ALSL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation; and:	(c) the Customer is only a bailee of the Goods and must return the Goods to ALSL on request;	
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and	(d) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for ALSL and must pay or deliver the proceeds to ALSL on demand;	
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and	(e) the Customer must not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of ALSL and must sell, dispose of or return the resulting product to ALSL as it so directs;	
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and	(f) the Customer irrevocably authorises ALSL to enter any premises where ALSL believes the Goods are kept and recover possession of the Goods;	
(d) includes the Customer's executors, administrators, successors and permitted assigns.	(g) ALSL may recover possession of any Goods in transit whether or not Delivery has been accepted;	
1.5 "Goods" means all Goods or Services supplied by ALSL to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).	(h) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of ALSL; and	
1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between ALSL and the Customer in accordance with clause 5 below.	(i) ALSL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.	
2. Acceptance	10. Personal Property Securities Act 1999 ("PPSA")	
2.1 The parties acknowledge and agree that:	10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:	
(a) they have read and understood the terms and conditions contained in this Contract; and	(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and	
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.	(b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by ALSL to the Customer, and the proceeds from such Goods as listed by ALSL to the Customer in invoices rendered from time to time.	
2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.	10.2 The Customer undertakes to:	
2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.	(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 ALSL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;	
2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with ALSL and it has been approved with a credit limit established for the account.	(b) indemnify, and upon demand reimburse, ALSL 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;	
2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit, and/or the account exceeds the payment terms, ALSL reserves the right to refuse delivery.	(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of ALSL; and	
2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.	(d) immediately advise ALSL 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.	
3. Errors and Omissions	10.3 Unless otherwise agreed to in writing by ALSL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.	
3.1 The Customer acknowledges and accepts that ALSL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):	10.4 The Customer shall unconditionally ratify any actions taken by ALSL under clauses 10.1 to 10.3, Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	
(a) resulting from an inadvertent mistake made by ALSL in the formation and/or administration of this Contract; and/or	10.5	
(b) contained in information from any literature (hard copy and/or electronic) supplied by ALSL in respect of the Services.		
3.2 If such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of ALSL, the Customer:		
(a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but		
(b) shall not be responsible for any additional costs incurred by ALSL arising from the error or omission.		
4. Change in Contract	11. Security and Charge	
4.1 The Customer shall give ALSL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by ALSL as a result of the Customer's failure to comply with this clause.	11.1 In consideration of ALSL agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, over and above the Customer's now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any moneys). The terms of this charge and security interest are the terms of Memorandum 20184344 registered pursuant to s.209 of the Land Transfer Act 2017.	
5. Price and Payment	11.2 The Customer irrevocably appoints ALSL and each director of ALSL as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.	
5.1 ALSL at its sole discretion the Price shall be either:		
(a) as indicated on any invoice provided by ALSL to the Customer; or		
(b) the Price as at the date of Delivery of the Goods according to ALSL's current price list; or		
(c) ALSL's quoted Price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.		
5.2 ALSL reserves the right to change the Price:		
(a) if a variation to the Goods which are to be supplied is requested; or		
(b) in the event of increases to ALSL in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond ALSL's control.		
5.3 Variations will be charged for on the basis of ALSL's quotation, and will be detailed in writing, and shown as variations on ALSL's invoice. The Customer shall be required to respond to any variation submitted by ALSL within ten (10) working days. Failure to do so will entitle ALSL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.	12. Defects, Returns and Warranties	
5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by ALSL, which may be:	12.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify ALSL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quality of the Goods. If the Customer fails to notify ALSL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quality of the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ALSL has agreed in writing that the Customer is entitled to reject, ALSL's liability is limited to either (a) ALSL's discretion) replacing the Goods or repairing the Goods.	
(a) on order placement;	12.2 Goods will not be accepted for return other than in accordance with 12.1 above, and provided that:	
(b) for credit account holders, twenty (20) days following the end of the month of the date of any invoice/s and/or statement furnished to the Customer by ALSL; or	(a) the Customer has complied with the provisions of clause 12.1; and	
(c) the date specified on any invoice or other form as being the date for payment; or	(b) ALSL has agreed in writing to accept the return of the Goods; and	
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by ALSL.	(c) the Goods are returned at the Customer's cost within ten (10) days of the Delivery date; and	
5.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and ALSL.	(d) ALSL will not be liable for Goods which have not been stored or used in a proper manner; and	
5.6 ALSL may in its discretion allocate any payment received from the Customer towards any invoice that ALSL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer ALSL may re-allocate any payments previously received and allocated, in the absence of any payment, allocation by ALSL, payment will be deemed to be allocated in such manner as preserves the maximum value of ALSL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.	(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.	
5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by ALSL nor to withhold payment of any invoice because part of that invoice is in dispute.	12.3 If ALSL accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 12.2(c) ALSL will reimburse the Customer's actual and reasonable costs of return Delivery.	
5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to ALSL an amount equal to any GST ALSL must pay for any supply by ALSL under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	12.4 ALSL may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of the lesser of the interest (15%) of the value of the returned Goods plus any freight.	
6. Description of the Goods	12.5 For Goods not manufactured by ALSL, the warranty shall be the current warranty provided by the manufacturer of the Goods. ALSL 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.	
6.1 The description, illustration and appearances contained in catalogues, price lists and other advertising material are approximately only and used by way of general description. The Goods are supplied in accordance with normal industry standards of manufacture and ALSL will not be liable to the Customer in respect of Goods which comply with these standards.	13. Consumer Guarantees Act 1993 and the Fair Trading Act 1986	
7. Delivery	13.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by ALSL to the Customer.	
7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:	13.2 ALSL agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").	
(a) the Customer or the Customer's nominated carrier takes possession of the Goods at ALSL's address; or	14. Intellectual Property	
(b) ALSL (or ALSL's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	14.1 Where ALSL has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of ALSL. Under no circumstances may such designs, drawings and documents be used without the express written approval of ALSL.	
7.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.	14.2 The Customer warrants that all designs, specifications or instructions given to ALSL shall not cause ALSL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify ALSL against any action taken by a third party against ALSL in respect of any such infringement.	
7.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery of the Goods as arranged then ALSL shall be entitled to charge a reasonable fee for redelivery and/or storage.	14.3 The Customer agrees that ALSL may (at its discretion) use the Goods for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which ALSL has created for the Customer.	
7.4 ALSL may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	15. Default and Consequences of Default	
7.5 ALSL's estimated time of Delivery is between three (3) to seven (7) days from confirmed receipt of the Customer's order and/or payment, which may be increased by one (1) or two (2) days for Delivery to rural areas. However, any time or date given by ALSL to the Customer is an estimate only. The Customer must still accept Delivery even if late, and ALSL will be liable for any loss or damage incurred by the Customer as a result of Delivery being late.	15.1 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 20.8% ALSL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	
8. Risk	15.2 If the Customer owes ALSL any money the Customer shall indemnify ALSL from and against all costs and disbursements incurred by ALSL in recovering the debt (including but not limited to internal administrative fees, legal costs on a solicitor and own client basis, ALSL's collection agency costs, and bank dishonour fees).	
8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.	15.3 Further to any other rights or remedies ALSL may have under this Contract, if a Customer has made payment to ALSL, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by ALSL under this clause 15.	
8.2 If any of the Goods are destroyed following Delivery but prior to ownership passing to the Customer, ALSL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ALSL is sufficient evidence of ALSL's rights to make the insurance proceeds without the need for any person dealing with ALSL to make further enquiries.	15.4 Without prejudice to ALSL's other remedies at law ALSL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ALSL shall, whether or not due for payment, become immediately payable if:	
8.3 If the Customer requests ALSL to leave Goods outside ALSL's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.	(a) any money payable to ALSL, become overdue, or in ALSL's opinion the Customer will be unable to make a payment when it falls due;	
8.4 ALSL is not responsible for any loss or damage to the Goods in transit. The Customer must, upon identifying the loss or damage on receipt of the Goods, lodge a claim with the carrier within twenty-four (24) hours of the date of receipt of the Goods. ALSL will render the Customer such assistance as may be necessary to press claims on carriers, provided the Customer has notified ALSL and the carrier in writing immediately.	(b) the Customer has exceeded any applicable credit limit provided by ALSL;	
	(c) the Customer 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	
	(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.	