

TERMS AND CONDITIONS OF CONTRACT FOR SALE OF GOODS

TECHGROW INTERNATIONAL PTY LTD ACN 158 296 596

of 408 Main North Road, Clare SA 5453(TECHGROW)

1. Acceptance

- 1.1 All dealings between the parties will be governed by these T&Cs, unless otherwise agreed in writing. These Terms and Conditions supersede all previous terms and conditions between the parties.
- 1.2 The Customer is taken to have accepted and is bound, jointly and severally, by these T&Cs if the Customer (or a person purportedly acting on behalf of or with the authority of the Customer) places an order for or accepts delivery of any Goods from Techgrow.

2. Price

- 2.1 The Price will be as per any proposal, quotation, letter, order, invoice, credit application or other documentation provided by Techgrow to the Customer (**Terms**) and the Customer agrees to pay the Price immediately as and when any amount becomes payable as per the Terms.
- 2.2 Any variations to the Goods will be separately agreed and invoiced.
- 2.3 Notwithstanding clause 2.2, Techgrow may increase an accepted Price as a consequence of an increase in its own production or cartage costs, which increase will be termed an 'escalation' and noted on any relevant invoice provided to the Customer.

3. Risk & Title

- 3.1 Goods supplied by Techgrow to the Customer are at the Customer's risk immediately upon the earlier of the time that either:
 - (a) the Customer or the Customer's employee or agent takes possession of the Goods; or
 - (b) the Goods are dispatched for delivery to the Site or other agreed address.
- 3.2 Techgrow will give the Customer reasonable assistance in connection with any claim for loss or damage to the Goods following their dispatch.
- 3.3 The Customer must, at its cost, maintain the Goods in quality condition and insure the Goods against such risks as it thinks appropriate.
- 3.4 Title and ownership of the Goods will remain with Techgrow until it receives payment in full for the Goods, including any unpaid interest.
- 3.5 In the event that such Goods are lost or destroyed following delivery, then replacement will be at the Customer's expense and, if the Goods are damaged or destroyed prior to title and ownership passing to the Customer, Techgrow is entitled to all insurance proceeds received by the Customer in relation to such damaged or destroyed Goods.
- 3.6 The Customer permits Techgrow, and its employees and agents, to enter upon the Site or such other premises where the Goods are in order to recover possession and remove its Goods.

4. Delivery & Site

- 4.1 The Customer must ensure that the service provider delivering the Goods has unrestricted access to the Site at all necessary times to enable them to deliver the Goods and that access is suitable to accept the weight of delivery vehicles as may be reasonably necessary.
- 4.2 Techgrow is not liable for any loss or damage to the Site, unless due to Techgrow's own negligence, arising from a

consequence of the delivery of the Goods.

5. Rectifications

- 5.1 The Customer must notify Techgrow of any defects to the Goods within 48 hours after delivery.
- 5.2 Techgrow will take all reasonable steps to inspect and, if required, remediate the defect within 7 days of receiving written notice of the defect.
- 5.3 Techgrow accepts no liability for any delays or remediation Goods undertaken by or on behalf of the Customer without the prior written consent of Techgrow.

6. Liability

- 6.1 The Customer acknowledges and agrees that:
 - (a) Techgrow offers no guarantees or bears no liability:
 - i. in the event that, for any reason whatsoever, it is unable to provide the Goods as and when ordered by the Customer;
 - ii. in relation to damage caused to the Goods by any third-party at the Site;
 - iii. the defect arises because the Customer did not follow Techgrow's oral or written instructions about the storage, commissioning, installation, use and maintenance of the Goods;
 - iv. the defect arises from normal wear and tear of the Goods;
 - v. the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by the Customer, the Customer's employees or agents or any third parties.
 - (b) It is the Customer's responsibility to:
 - i. ensure the Goods ordered conform to the Customer's requirements and are suitable and sufficient for the Customer's purpose;
 - ii. inspect the Goods on delivery to the Site or on collection.
- 6.2 In the event of any Goods supplied by Techgrow under these T&C's being defective, to the extent permitted by law, the liability of Techgrow (if any) shall be limited to, as appropriate, the repair, replacement, or refund for the Goods or part of them.
- 6.3 To the extent permitted by law, Techgrow's liability under any condition or warranty which cannot legally be excluded is limited to:
 - (a) the replacement of the Goods;
 - (b) the repair of the Goods (if applicable);
 - (c) the payment of the cost of replacing the Goods; or
 - (d) the payment of the cost of having the Goods repaired (if applicable).
- 6.4 To the extent permitted by law or as otherwise provided for in these T&Cs, Techgrow is not liable (contractual, tortious or otherwise) to the Customer for any loss or damage (including, without limitation, consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of Goods pursuant to these T&Cs or as a consequence of the act, failure or omission of Techgrow.

7. Warranty

- 7.1 Except those guarantees provided under the Australian Consumer Law, Techgrow provides no warranties in relation to the Goods unless expressly stated to the Customer by Techgrow.
- 7.2 Subject to clause 7.3, the Customer may rely on the manufacturer's warranties, if any, set out in the relevant manufacturer's document.
- 7.3 Although Techgrow may in some instances be engaged by the manufacturer as the authorised distributor to fulfill the manufacturer's warranties, the Customer acknowledges that Techgrow provides no warranties in its own capacity and agrees not to hold Techgrow liable for any failure to fulfill the manufacturer's warranties.
- 7.4 The Customer agrees and acknowledges that:
 - (a) the respective manufacturers have branches, franchise dealers and distributors for the sale of service parts and the provision of service to owners of the manufacturers' products. While the manufacturers endeavour to ensure that such branches, dealers and distributors carry adequate stocks of service, to the extent permitted by law, neither Techgrow nor the manufacturers promise that such parts or service facilities shall be available or available at any specific location or at any particular time;
 - (b) to the extent permitted by law, Techgrow does not warrant that suitable facilities for the repair of the Goods or that spare parts for the Goods shall be available in the case of Goods not manufactured by the manufacturers.
- 7.5 Techgrow agrees to use all reasonable endeavours to assign all warranties provided by third parties in performing any modifications to the Products that are sold to the Customer.

8. Indemnity

- 8.1 The Customer agrees to indemnify Techgrow on a full indemnity basis for all direct loss and damage and liabilities (whether monetary or capable of being converted into money) suffered by Techgrow as a result of or caused by or contributed to by any act or omission or default of the Customer.
- 8.2 Without limiting the generality of clause 8.1, the indemnity extends to all loss that Techgrow suffers or may suffer:
 - (a) that is of a civil or criminal or penal nature;
 - (b) that involves increased expenditure or effort in supplying Products to Customers;
 - (c) that is not indemnified under any contract of insurance in which Techgrow is interested;
 - (d) as a result of any breach or default of the Customer of any stipulation in this Agreement; and
 - (e) whether during or after the termination of this Agreement.
- 8.3 The Amount the Customer is required to pay Techgrow pursuant to this indemnity shall be reduced to the extent that any act or omission of Techgrow or its servants or agents contributed to the loss.

9. Privacy Act

- 9.1 The Customer agrees that Techgrow may obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, date of birth, occupation, previous credit applications, credit history) about the Customer in relation to any credit provided by Techgrow.

- 9.2 The Customer agrees that Techgrow may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Customer;
 - (b) to notify other credit providers of a default by the Customer;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 9.3 The Customer consents to Techgrow being given a consumer credit report to collect overdue payment on commercial credit.
- 9.4 The Customer agrees that any personal credit information provided may be used and retained by Techgrow for the following purposes (and for other agreed purposes):
 - (a) the provision of Goods;
 - (b) analysing, verifying and checking the Customer's credit, payment and status in relation to the provision of Goods;
 - (c) processing of any payment instructions, direct debit facilities or credit facilities requested by the Customer; or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 9.5 Techgrow may give information about the Customer to a CRB for the following purposes:
 - (a) to obtain a consumer credit report; and
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 9.6 The information given to the CRB may include:
 - (a) personal information (e.g. name, address, date of birth, occupation, previous credit applications, credit history);
 - (b) name of the credit provider and that Techgrow is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit;
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Techgrow has been paid or otherwise discharged and all details surrounding that discharge;
 - (g) information that, in the opinion of Techgrow, the Customer has committed a serious credit infringement; and
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than five hundred dollars (\$500.00).
- 9.7 The Customer shall have the right to request from Techgrow:
 - (a) a copy of the information about the Customer retained by Techgrow and the right to request that Techgrow correct any incorrect information; and

- (b) that Techgrow does not disclose any personal information about the Customer for the purpose of direct marketing.
- 9.8 Techgrow will destroy personal information upon the Customer's request or if it is no longer required unless it is required in order to fulfil the obligations of the contract or is required to be maintained or stored in accordance with the law.
- 9.9 The Customer can make a privacy complaint by contacting Techgrow. Techgrow will respond to that complaint within 7 days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 10. Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause, 'financing statement', 'financing change statement', 'security agreement', and 'security interest' has the meaning given to it by the PPSA.
- 10.2 The Customer acknowledges and agrees that these T&Cs constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods or collateral (account) - being a monetary obligation of the Customer to Techgrow for Goods that have previously been supplied and that will in the future be supplied by Techgrow to the Customer.
- 10.3 The Customer undertakes to:
- (a) promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Techgrow may reasonably require to:
 - i. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - ii. register any other document required to be registered by the PPSA; or
 - iii. correct a defect in a statement referred to in clauses 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Techgrow 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 Goods charged thereby;
 - (c) not register a finance change statement in respect of a security interest without the prior written consent of Techgrow; and
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Techgrow.
- 10.4 Techgrow and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3) and 132(4) of the PPSA.
- 10.6 The Customer waives its rights as a grantor or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Techgrow, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer shall unconditionally ratify any actions taken by Techgrow under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these T&Cs is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of Techgrow agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether jointly or several) in any real property owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these T&Cs (including but not limited to, the payment of any money).
- 11.2 The Customer irrevocably appoints Techgrow and each director of Techgrow as the Customer's true and lawful attorney 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.
- 12. Interest**
- 12.1 If the Customer fails to meet the agreed payment terms, the Customer must pay to Techgrow interest on any amount outstanding from the date the payment first fell due until payment is made in full.
- 12.2 Interest will be charged at a rate charged from time to time by Techgrow's bankers on overdraft accommodation of an amount of \$100,000.00.
- 12.3 Techgrow may in its discretion:
- (a) elect to apply payments by the Customer to an outstanding invoice or interest; and
 - (b) pass on to the Customer any fees and charges incurred in accepting the Customer's payments, including any bank, institution or merchant fees when processing credit card and electronic payment transactions.
- 13. GST**
- 13.1 Unless otherwise expressly stated, the Price is exclusive of GST.
- 13.2 The Customer must pay GST imposed on any supply made under or in accordance with these T&Cs by Techgrow. Payment of the additional amount will be made at the same time and on the same basis as payment of the Price, subject to the provision of a tax invoice by Techgrow to the Customer.
- 13.3 Any term used in this clause 13 has the same meaning as given to it in the GST Act.
- 14. Enforcement Expenses**
- The Customer indemnifies Techgrow from and against all Techgrow's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Techgrow's rights under these T&Cs.
- 15. Taxes**
- All Federal and State government duties, levies, imposts, fees and taxes (excluding income tax and capital gains tax), whether current or introduced during the term of these T&Cs and which do not otherwise form part of the Price, will be charged to each applicable Work and will be payable by the Customer immediately, unless an approved exemption is provided to Techgrow at or before the time of ordering the Goods.

16. Subcontract and Assignment

- 16.1 Techgrow may licence, assign or sub-contract all or any part of its rights and obligations under these T&C's in its absolute discretion and without the Customer's consent.
- 16.2 The Customer may not licence, sub-contract or assign all or any part of its rights and obligations under these T&C's without the written consent of TRCP.
- 16.3 All employees, agents, licensee, sub-contractors or assignees of the Customer will be bound by these T&C's.

17. FORCE MAJEURE

Neither party shall be liable for any failure nor delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

18. Change in Control

The Customer shall give Techgrow not less than fourteen days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details.

19. Jurisdiction

These T&Cs and any agreement to which they apply are governed by the laws of South Australia and are subject to the jurisdiction of the courts in that state.

20. Invalidity and Severance

Any term or condition of these T&Cs, which infringes any legislation, whether State or Federal, shall be severable from this contract without effecting the remaining terms or conditions.

21. Amendments

These T&Cs may only be amended with the consent of both parties in writing, and will prevail to the extent of any inconsistency with any other agreement between Techgrow and the Customer.

22. Definitions

In these T&Cs:

- 22.1 **Customer** means any person or persons, company or business entity to whom Techgrow sells or supplies, or proposes to sell or supply the Goods;
- 22.2 **GST** means Goods and Services Tax (GST) as defined within GST Act;
- 22.3 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 22.4 **Price** means the Price payable (plus GST where applicable) by the Customer for the Goods;
- 22.5 **Site** means any address nominated by the Customer at which the Goods are to be delivered by TECHGROW;
- 22.6 **Techgrow** means Techgrow International Pty Ltd ACN 158 296 596 of 408 Main North Road, Clare SA 5453;
- 22.7 **Goods** means all goods or products supplied or sold from time to time by Techgrow to the Customer; and
- 22.8 a reference to a party includes the party's executors, administrators, successors and permitted assigns.