

TERMS AND CONDITIONS OF TRADE

BACKGROUND

These Terms contain the entire agreement between the Parties, and supersede all prior arrangements, representations, warranties and understandings between the Parties. By accepting EPSL's quotation, or engaging EPSL's services, you agree to be bound by the Terms, and shall comply with them forthwith.

1. DEFINITIONS

In these Terms and Conditions, unless the context requires otherwise:

Agreement	means the contract formed upon EPSL's acceptance of a Booking placed by the Client, as described in clause 5.1.
Booking	means any request for Services accepted by EPSL.
Client	means the client engaging EPSL to provide the Services.
EPSL	means Endeavour Property Services Limited.
Parties	means the Parties to the Agreement and "Party" means any one of the Parties.
Price	means the price for the Services agreed between the Parties, or if not agreed, then EPSL's prevailing rates and charges for the Services.
Products	means the products used to undertake the Services.
Property	means the property on which the Services will be supplied.
Service(s)	means the services agreed between the Parties.
Terms	means these terms and conditions.
Working Days	means days other than Saturday, Sunday, public holidays, or days from 23 December – 6 January (inclusive).

1. GENERAL RULES OF INTERPRETATION

- (a) Singular words include the plural and vice versa, and where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (b) References to any Party shall mean and include a reference to that Party, its successor, executors or personal representatives (as the case may be), and transferees.
- (c) Where more Parties than one are covenanting Parties, the covenants expressed or implied on these Terms bind the covenanting Parties jointly and each of them severally.
- (d) Any reference to legislation, statute, regulation, ruling, code, rules or ordinance includes reference to any modification, substitute for, consolidation or re-enactment of it and any regulation, order in council or other instrument from time to time made or issued under such legislation, statute, regulation, ruling, code, rules or ordinance.
- (e) Headings are for convenience only and do not affect the interpretation of these Terms except for use as cross-references.
- (f) Any covenant not to do anything shall also constitute an obligation not to suffer, permit, cause or assist any other person to do that thing.

2. ENGAGEMENT

- 2.1. The Client engages EPSL to supply the Services, and EPSL accepts that engagement, on the following Terms.
- 2.2. The Services are confined to the Services specified in the Booking. Alterations or additions to the scope of the Services must be separately agreed by the Parties.
- 2.3. The Client acknowledges that EPSL may be required, in the course of providing the Services, to make assessments based on information supplied either by the Client, or compiled by others. EPSL will rely on and not verify its accuracy and completeness. The Client agrees that EPSL will not be liable for any loss or damage the Client sustains, directly or indirectly, in connection with EPSL's reliance on that information.
- 2.4. EPSL reserves the right to engage subcontractors, and any reference to EPSL includes subcontractors. EPSL will remain liable to the Client for any of the Services that are provided by any subcontractor.

3. PERFORMANCE

- 3.1. Any periods of time for performance of the Services are estimates only. EPSL shall use reasonable commercial endeavours to meet deadlines; however, any delay shall not entitle the Client to terminate the Agreement or claim remedies.
- 3.2. EPSL reserves the right to change the date of the Services without notice, to a time that it is mutually acceptable to the Parties.
- 3.3. The Client agrees to:

- (a) Provide EPSL with full information about the Property and any other information regarding the Services reasonably requested by EPSL; and
- (b) Work constructively and in good faith with EPSL in order to resolve any aspects of the Services, to enable the Services to be provided efficiently.

5. BOOKINGS

- 5.1. A contract shall not come into existence between the Client and EPSL until EPSL's acceptance of a Booking.
- 5.2. Any Booking accepted by EPSL will be on these Terms only.

6. PRICE

- 6.1. The Price may be increased or decreased by the amounts of any increase or decrease in the cost of materials, transport, labour, customs and other duties, taxes, insurance and any other factors affecting the provision of the Services due to circumstances beyond the control of EPSL between the date of Booking and the date of provision of the Services required. EPSL shall not be bound by any quotation given.
- 6.2. Any increase in the cost to EPSL of the Services, duties, taxes and insurance which occurs after the Booking is made by the Client will be to the Client's account.
- 6.3. All Prices quoted are exclusive of GST and other duties and taxes, which shall be for the Client's account unless otherwise stated.

7. PAYMENT TERMS

- 7.1. Unless otherwise agreed, payment of the Price is due seven days after the completion of EPSL performing the Services.
- 7.2. Where these Terms have been entered into by an agent (or person purporting to be an agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for the payment of all monies due to EPSL under these Terms.
- 7.3. In the event any monies due are not paid in full, EPSL reserves the right to cancel the Booking and not undertake the Services.

8. WARRANTIES

- 8.1. Excluding a situation arising under clause 11 where treatment can take up to a year, EPSL warrants the Services against faulty workmanship or materials for sixty (60) days from the date of performance of the Services and agrees to remedy or repair any defective Services at its cost (excluding travelling costs and expenses) during the warranty period. EPSL shall not be responsible for defective Services caused by fair wear and tear, incorrect or unintended use, misuse, neglect or accident. To the fullest extent permitted by law, this warranty shall be the Client's sole remedy against EPSL. If EPSL breaches this warranty then EPSL's entire liability and the Client's exclusive remedy for breach of that warranty shall be, at EPSL's option, either:
 - (a) Resupplying the Services;
 - (b) Paying for the Services to be resupplied by a third party; or
 - (c) Refunding the Price paid for the defective Service.
- 8.2. Any third-party goods supplied as part of the Services are subject only to the warranty given by the manufacturers or suppliers of the goods.
- 8.3. Except as expressly provided in these Terms, to the maximum extent permitted by law, EPSL disclaims all warranties (statutory, express or implied) including, but not limited to, any implied warranties of standards compliance, with regard to the Services.
- 8.4. EPSL is not responsible for the acquisition, or liable for the accuracy and validity, of any consents, licences, permits and authorisations required to lawfully undertake the Services on the Property.
- 8.5. The Consumer Guarantees Act 1993 or equivalent legislation may apply to the Services provided by EPSL if the Client acquires the Services for personal, domestic or household use or consumption. If this Act applies, nothing in these Terms will limit or exclude the Client's rights under that Act. If the Client is acquiring the Services for business purposes, then the Client's rights are subject to these Terms only and the Consumer Guarantees Act 1993 shall not apply.
- 8.6. No warranty support will be provided where the Services has been modified, repaired or tampered with by a person other than EPSL.
- 8.7. Any requests for out-of-warranty support and maintenance of the Services shall (if accepted by EPSL) be provided at EPSL's prevailing charge rates.

9. WEATHER

- 9.1. Where EPSL deems the weather to be unsuitable to perform the scheduled Services, EPSL reserves the right to cancel the Services and rebook them at a time suitable to both Parties.
- 9.2. Where EPSL notifies the Client of a cancellation in accordance with clause 9.1, and the Client nevertheless requests that the Services are still to be carried out on the scheduled date, EPSL accepts no liability for any inefficacy of the Services.

10. ACCESS

- 10.1. The Client acknowledges that should EPSL be unable to access any part of the Property, including, but not limited to locked doors or gates, or large obstacles which prevent access, EPSL shall be responsible for cleaning only the reasonably accessible areas.

- 10.2. If EPSL has been engaged to provide Services that require entry into a dwelling on the Client's Property, and EPSL are unable to gain access to the dwelling, the Client will be charged the full Price for the Service, even if the Services were unable to be performed.
11. **LICHEN, MOSS AND MOULD**
- 11.1. The Client acknowledges that any treatment of moss, lichen, mould or other forms of unwanted growth included in the Services can take up to a year to be fully effective.
- 11.2. Where the Client has concerns regarding the efficacy of the Services referred to in this sub clause 11.1, the Client is to notify EPSL in writing not less than nine (9) months following the date the Services were performed.
- 11.3. The Client acknowledges that EPSL will take no action (if any is required) regarding a remedy for the Services specifically referred to in this clause 11, until the period of one (1) year (from the date the Services were performed) has elapsed.
- 11.4. Where the Client has provided notice to EPSL in accordance with sub clause 11.2, the Client shall grant EPSL access to the Property to determine the efficacy of the Services provided, and to discuss whether further steps are required.
12. **CLIENT ACKNOWLEDGEMENTS AND OBLIGATIONS**
- 12.1. The Client acknowledges that it is responsible for notifying EPSL in writing of any new, novel, unusual or irregular coating, paint or other exterior applied or affixed to the Property that may result in reduced efficacy or adverse reactions of EPSL's Products or methods used to undertake the Services.
- 12.2. The Client shall notify EPSL in writing of any safety hazards or risks on the Property at least 48 hours before the Service is due to commence. The Client will use their best endeavours to mitigate any risks on the Property to ensure that the Property is safe for EPSL's employees or contractors.
- 12.3. The Client acknowledges that it is responsible for switching off power supply to the Property (where the Property has poorly insulated power sources) before the Services are performed.
- 12.4. For the safety of the Client's pets, and EPSL's employees or contractors, the Client is obliged to ensure that all pets are contained at the time the Services are scheduled to be performed.
- 12.5. The Client acknowledges that it is solely responsible for ensuring that all windows and doors are securely fastened at the time the Services are scheduled to be performed. All care must be taken to protect window sills and external doors from any water ingress due to gaps in joinery.
- 12.6. The Client acknowledges that it is solely responsible for putting measures in place to protect any plants or vegetation on the Property.
- 12.7. The Client acknowledges that if the Client has not complied with any of the obligations in clause 12.1 to clause 12.6 inclusive, EPSL is entitled to cancel the Booking, and shall not be liable to refund the Price to the Client.
- 12.8. The Client warrants that it is the owner or lawful occupier of the Property, and is authorised to procure the Services on the Property.
13. **EXCLUSION OF LIABILITY**
- 13.1. Except as provided in clause 8.1 and to the fullest extent permitted by law, EPSL shall in no circumstance be liable at common law (including negligence or equity) or otherwise for any damage, costs, expenses, claims, liability, loss or injury arising from or in relation to of the Services performed, this Agreement, or from a consequence of any act, default or negligence on the part of EPSL, its employees, agents or contractors.
- 13.2. Without limiting clause 13.1, EPSL shall in no circumstance be liable for:
- (a) Any loss or damage arising by reason of any delay in the completion of the Services;
 - (b) Any loss of profits or loss of revenues;
 - (c) Any indirect or consequential loss; or
- (d) Any loss resulting from any errors or omissions arising from incorrect information provided by the Client, or failure by the Client to provide information, or an oversight or a misinterpretation of a Client's verbal instructions.
- 13.3. EPSL accepts no liability for any claim relating to or arising from any representations, warranties or conditions made or conveyed by any agent or representative of EPSL, which is not expressly confirmed by EPSL in writing.
- 13.4. EPSL accepts no liability for:
- (a) Any damage to paint work, or loss of paint due to aged or incorrectly applied paint;
 - (b) Any electrical related damage; and
 - (c) Any damage to any plants or vegetation.
14. **LIMITATION OF LIABILITY**
- 14.1. EPSL's maximum aggregate liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or relating to the performance or failure of any Services supplied by EPSL, or arising from or relating to the Booking or the Agreement, shall not exceed the amount paid by the Client for that particular Service.
15. **NOTICE OF DEFECTS**
- 15.1. If the Client becomes aware of any problem with the Services, or non-compliance with these Terms, the Client must no later than 10 Working Days after becoming aware of it, notify EPSL in writing. Failure to do so will be considered a waiver by the Client of any claim it may have against EPSL in relation to the Booking or the Services.
16. **CANCELLATION OF BOOKINGS**
- 16.1. CANCELLATION:
- (a) The Client may cancel a Booking at any time by giving no less than three (3) Working Days written notice. Cancellations within the 3 day notice period may result in additional charges.
 - (b) EPSL may cancel a Booking at any time by giving written notice, and refunding any Price paid by the Client.
17. **FORCE MAJEURE**
- 17.1. EPSL shall not be liable in any way whatsoever for any delay or breach of these Terms caused directly or indirectly by war, acts of God, strike, lockout, riot, government action or interference, fire, earthquake, material shortage, late or non-delivery by a supplier, shipping or transport delay or any other cause beyond EPSL's reasonable control.
18. **NOTICES**
- 18.1. Notices under the Agreement can be delivered in person, or by post or email to the address notified by each Party (which may be updated from time to time by each Party).
19. **SEVERABILITY**
- 19.1. If any of these Terms are held to be invalid, unenforceable or illegal for any reason, the remainder of these Terms shall remain otherwise in full force and effect apart from such provision.
20. **ENTIRE AGREEMENT**
- 20.1. A Booking agreed between the Parties, together with these Terms, constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, in relation to the Services or other subject matter of these Terms.
- 20.2. Any documents supplied by the Client which contain any terms and conditions shall have no effect to the extent that they are inconsistent with these Terms. In the event of any conflict arising between a Booking and these Terms, the Booking shall prevail.
- 20.3. Failure by EPSL to insist upon strict performance of any of the Terms or to exercise any of its rights shall not be or be deemed to be a waiver of any subsequent breach of any term or condition or right.