

## The ProGroup Franchisee Terms and Conditions of Trade

### 1. Definitions and Interpretation

In these Terms:

**Seller** means the independently owned and operated The ProGroup franchisee (trading as GroutPro, Deck&FencePro, Prep&PaintPro, GarageCarpetPro or GrassPro) who provides the Customer with Products.

**Customer** means the customer named in the Quote or, where no Quote has been provided, the person receiving Products from the Seller (and includes any person acting on behalf of the Customer).

**Franchisor** means The Pro Group New Zealand Limited.

**Goods** means goods supplied by the Seller to the Customer.

**Services** means services supplied by the Seller to the Customer and includes any advice or recommendations.

**Price** means the price of the Products as set out in the Quote or Work Authorisation or, where no Quote or Work Authorisation has been provided, as notified by the Seller to the Customer.

**Products** means Goods, Services or a combination of both.

**Quote** means the Seller's quote for the supply of Products to which these Terms are attached.

**Terms** means these The ProGroup franchisee terms and conditions of trade.

**Work Authorisation** means a written request or authority from the Customer to provide specified Products which the Seller has accepted in writing.

### 2. Acceptance

- Where the Seller accepts a Quote, or otherwise requests or accepts Products from the Seller, these Terms shall apply to the supply of those Products.
- The Seller shall not be bound by any statement (including any advice or recommendation), condition or agreement (**representation**) made by a representative of the Seller unless that representation is expressly stated in a Quote.

### 3. Quotes and Work Authorisations

- The Products shall be as described in the Quote or, where there is no Quote, as described in any Work Authorisation provided by the Seller to the Customer.
- Where both a Quote and a Work Authorisation exist in respect of the supply of the same Products, the terms of the Quote (and not the Work Authorisation) shall apply to the provision of those Products and the Work Authorisation shall be deemed to be the Customer's acceptance of the terms of the Quote.

### 4. Price and Payment

- The Price shall be the price set out in the Quote (provided that the Customer has accepted the Quote in writing within thirty (30) days of the date of the Quote) or Work Authorisation or, where there is no Quote (or the Customer has not accepted the Quote in writing within thirty (30) days of the date of the Quote) or Work Authorisation, the Seller's current price at the date of delivery of the Products, or the price set out in the Seller's relevant invoice.
- The Price is exclusive of GST (unless expressed otherwise).
- Where the Quote or Work Authorisation contains or, where there is no Quote or Work Authorisation, the Seller requires, a deposit or non-refundable diagnostic or other fee, that payment must be paid by the Customer prior to commencement of the supply of the Products.
- Payment terms will be as specified in the relevant Quote or Work Authorisation. Where there is no Quote or Work Authorisation, or the Quote or Work Authorisation does not specify payment terms, payment will be due upon supply of the Products, unless specified otherwise in the Supplier's invoice.
- All payments must be made by the Customer in full, without deduction.

### 5. Default

- Where any part of the Price is not paid on the due date for payment, the Seller may:
  - charge the Customer interest on the overdue amount, at a rate of 2.5% per calendar month, from the date when payment becomes due until the date of payment in full;
  - suspend the provision of the Goods or Services until payment is made in full.
- The Customer will reimburse the Seller for all collection costs, including legal costs on a solicitor/own client basis, the Seller incurs recovering any overdue amount.

### 6. Title

- Title in Goods shall not pass until the Customer has paid all amounts due for all Goods supplied to Customer.
- Where payment for any Goods is overdue (**unpaid for Goods**) the Seller may require the Customer to return those unpaid for Goods immediately to Seller. If the Customer fails to return unpaid for Goods when requested, the Customer grants the Seller or the Seller's agent an unrestricted and irrevocable licence to enter any premises where unpaid for Goods are situated and take possession of the unpaid for Goods, without being responsible for any damage caused.

### 7. Privacy Act 1993

The Customer authorises the Seller to collect, retain, use and disclose to any person, personal information about the Customer, for the purposes of assessing the Customer's creditworthiness, debt collection, or marketing any Products to Customer.

### 8. Risk

- All risk in Goods passes to the Customer on delivery of the Goods.
- If any Goods are damaged or destroyed before the Customer has paid for them, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms, to receive all insurance proceeds payable in respect of the Goods.

### 9. Liability

- In no event shall the Seller be liable (whether in contract, tort, including negligence, or otherwise) for any indirect, incidental, consequential, general or exemplary damages, any pure economic loss (whether direct or indirect), whether suffered by the Customer or any other person, arising from or related to any act or omission of the Seller (including pursuant to these Terms).
- The Seller's liability to the Customer in connection with these Terms shall not, in aggregate, exceed an amount equal to the Price.

- The Seller shall not be liable to the Customer for any loss or damage suffered by the Customer to the extent caused by:
  - any delay or failure by the Customer to perform its obligations under these Terms, for whatever reason;
  - any act or omission (even if accidental, and whether or not negligent or wilful) of any person not under the direct control of the Seller, including the Customer and its agents or employees;
  - defects in any products and/or services provided by the Customer, its agents or employees (whether or not used in conjunction with Products);
  - Goods which have been stored or used in an improper manner.
- The Customer acknowledges that the Seller is an independent franchisee of the Franchisor and the Franchisor shall have no liability to the Customer whatsoever in respect of any act, omission, default or breach by the Seller. For the purposes of Subpart 1 of the Contract and Commercial Law Act 2017, this provision shall confer a benefit on the Franchisor which is enforceable by it as if it were a party to these Terms.

### 10. Consumer Guarantees Act 1993 (CGA)

- Where the Customer is in trade or purchases Products for the purposes of a business, the provisions of the CGA shall not apply.
- Nothing in these Terms is intended to exclude any of the guarantees given to a consumer pursuant to the CGA. To the extent any provision of these Terms purports to exclude or limit any right or remedy of the Customer under the CGA, that provision shall be read down so as to be compliant with the CGA.

### 11. Warranties

- The Seller warrants that:
  - Goods will be new (unless otherwise stated) and free from material defects in design;
  - Services will be provided with reasonable care, skill and diligence and will conform to the relevant Quote or Work Authorisation.
- Except as required by law, the Seller provides no other warranties in respect of Products other than those expressly set out in a Quote or Work Authorisation.
- The Customer shall inspect the Goods on delivery and the Services on completion and shall within seven (7) days of delivery or completion notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the relevant Quote or Work Authorisation, or where there is no Quote or Work Authorisation, any other description provided by the Seller in writing.
- If the Customer believes, in good faith, that any Products are defective in any way, the Customer must notify the Seller in writing and allow the Seller an opportunity to inspect the affected Products within a reasonable time. If the Customer fails to comply with this paragraph, the affected Products shall be conclusively presumed to be free from any defect or damage.
- Where the Seller is not the manufacturer of the Goods, the Seller will use all reasonable endeavours to pass on to the Customer the benefit of the manufacturer's warranty.
- Except as prohibited by law, the Seller's liability for defective Products is limited to replacing or (at the Seller's discretion) repairing Goods, or redelivering Services.

### 12. Personal Property Securities Act 1999 (PPSA)

- By accepting a Quote, or otherwise requesting or accepting Goods from the Seller, the Customer grants the Seller a security interest in the relevant Goods and the Seller may register a financing statement in respect of that security interest in accordance with the provisions of the PPSA.
- The Customer waives its right to receive a verification statement in respect of any financing statement or financing charge statement registered by the Seller.

### 13. Cancellation

If the Customer cancels delivery of Products the Customer shall be liable for any costs incurred by the Seller up to the time of cancellation.

### 14. Intellectual Property

- Where the Seller has provided any designs or drawings in respect of Products for the Customer, then all copyright and other intellectual property rights in those designs and drawings shall remain vested in the Seller and shall only be used by the Customer for the purposes of the Customer's use of the Products.
- Where any designs, drawings or other materials have been supplied by the Customer for the purposes of the provision of Products, then the Customer warrants that those designs or drawings shall not infringe, and their use shall not cause the Seller to infringe, the rights of any third party.

### 15. Force Majeure

Seller will not be liable to Customer for any delay or non-performance of its obligations arising from any cause beyond Seller's control including any act of God, governmental act, war, fire, flood, explosion, civil commotion, strike, lockout or other industrial action (including any such action by sub-contractors of Seller) (**force majeure event**), and the performance of Seller's obligations, to the extent affected by the force majeure event, will be suspended during the period that the cause persists.

### 16. General

- If any part, term or provision of these terms and conditions is found to be unenforceable or rendered to be ineffective by virtue of non-registration, illegality or otherwise, then such part, term or provision shall be severed, without the validity and enforceability of the remaining provisions being affected, prejudiced or impaired.
- Buyer is responsible for complying with the provisions of all statutes and all rules or regulations in force in relation to the Products or their use, including complying with any land covenants applicable to the land or premises together with the obtaining of all necessary permits and/or consents required from any local or regional authority in relation to the Products and their use.
- These Terms and the Quote or Work Authorisation (as applicable) constitute the entire understanding and agreement between the parties in respect of the Products and supersede all prior understandings, agreements, representations and correspondence between the parties.