



## GRAFTON GENERAL PRODUCTS TERMS AND CONDITIONS

**Grafton General Products**  
Home Safety Modifications  
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Phone: (08) 9418 6343  
Email: info@ggpwa.com.au  
ABN 86 621 430 073

### 1. CONTRACT AND PERFORMANCE

- 1.1 This Services Agreement is a contract between **MOBILYTA PTY LTD TRADING AS GRAFTON GENERAL PRODUCTS (ABN 86 621 430 073) (we, us, our)** and the person or entity named in the Agreement Instrument or on the Quotation (**you, your**), under which we or our Personnel will supply and install the Products (the **Services**) in return for the Price. It is subject to any Agreement Details, the Quotation, these Terms and Conditions, and any other documents or schedules attached or referred to in the Agreement in the order in which they are attached or referenced (together, the **Agreement**).
- 1.2 If there is any ambiguity or discrepancy between the documents that make up the Agreement, it must be resolved in the order of the documents set out in clause 1.
- 1.3 You agree and acknowledge that:
  - (a) while we understand that others might be involved in planning the Services (including occupational therapists, aged care providers, support coordinators, plan managers or family members), our Agreement is with you, and we take instructions from you unless you notify us in writing that you have authorised someone else to make decisions on your behalf;
  - (b) even if you have authorised another person to help you to instruct or communicate with us or make decisions, we will require your confirmation before we take any steps that affect the Services, the Price or the agreed dates for completion; and
  - (c) where you have authorised an agent or representative to communicate with and instruct us on your behalf, you will be liable for all of the acts and omissions of the agent or representative as if they were your own acts and omissions.
- 1.4 You (or your agent or representative, on your behalf) can accept the Agreement by:
  - (a) purchasing Products through our website;
  - (b) instructing us (whether via our online job management system, in writing, by email or orally) to proceed with the Services after the Quotation has been provided to you;
  - (c) paying the Deposit;
  - (d) confirming acceptance of the Quotation via our online job management system, or email to us;
  - (e) signing and returning a copy of the Quotation or the Agreement instrument to us (including electronically); or
  - (f) issuing a purchase order referring to the Quotation or this Agreement.
- 1.5 To the extent that any correspondence from you referring to or communicating acceptance of our Quotation, or purchase order or instruction issued by you, attaches or refers to any terms and conditions not included in this Agreement, these Terms and Conditions prevail to the extent of any inconsistency and represent the entire agreement between us and you.
- 1.6 We may withdraw or alter any Quotation at any time. If we do not withdraw the Quotation, it is valid for the period stated on the Quotation. If no period is stated, it is valid for 45 days from the date the Quotation was provided to you.
- 1.7 We will commence the Services after:
  - (a) you confirm acceptance of the Agreement; and
  - (b) you pay us any agreed Deposit and specified disbursements or expenses.

### 2. OUR OBLIGATIONS

- 2.1 Subject to any confirmation or necessary approval being granted by a relevant government authority, we will carry out and complete the Services:
  - (a) in accordance with the Agreement and any Agreement documents (including the Quotation);
  - (b) by an agreed date for completion, or if no date is agreed, within a reasonable time, subject to any extension of time;
  - (c) diligently, in a proper and tradesman-like manner, between the hours of 7.30am and 4pm Monday to Friday;
  - (d) using materials that are suitable, new, free of defects and that comply with relevant standards;
  - (e) using Personnel who are properly trained, have the necessary experience to carry out the Services and hold all necessary qualifications, approvals, licences and accreditations; and
  - (f) in accordance with all relevant laws and regulations.

### 3. YOUR OBLIGATIONS

- 3.1 You will:
  - (a) pay us the Price or procure payment of the Price in the manner and at the times stated in the Quotation and/or these Terms;
  - (b) promptly provide us with any information or directions that we reasonably request from you in connection with this Agreement;
  - (c) give us uninterrupted possession of and access to the Site to the extent necessary to perform the Services, before or on the Access Date;
  - (d) ensure that the Site is free of obstructions, furniture and hindrances (including pets); and
  - (e) ensure that you give us as much notice as reasonably possible (and in any event at least 24 hours' notice) of any cancellation or rescheduling of the Access Date or any other agreed date for carrying out the Services.
- 3.2 You warrant and acknowledge that:
  - (a) by accepting the Quotation, you are confirming that:
    - (i) the description of the scope of the Services on our Quotation is correct and complete and we may rely on that confirmation, including in relation to:
      - (A) product selection;
      - (B) methodology and sequence of the Services;
      - (C) specification, quality, dimensions and appearance of the Products;
      - (D) all other specifications in relation to the Products and/or the Services; and
    - (ii) you have had an opportunity to review the specifications and appearance of the Products; and
    - (iii) you understand the purpose and appearance of the Products;
  - (b) the Site is safe and free from asbestos or other defects that may affect our or our Personnel's safety;
  - (c) the Site is adequate and fit for the purpose of installing the Services;
  - (d) there are no property or substrate damage or defects which might reasonably affect the Services;

- (e) you have informed us of any known underlying substructure, including water and gas pipes, and we may rely on the accuracy of that information; and
  - (f) the Site, including the walls and any supporting structure, is sound and able to accommodate the performance of the Services.
- 3.3 Prior to the commencement and for the duration of the Services you must ensure that:
- (a) all obstacles, equipment, shelving, furniture, non-structural cabinetry and other items (including builders' debris) are removed from the area where the Services are to be performed and the Site will remain clear for the duration of the Services;
  - (b) passage for our Personnel and their equipment and vehicles is and remains unobstructed; and
  - (c) there have been no material changes to the Site that cause the Site conditions to differ to those inspected or measured by us prior to providing the Quotation.
- 3.4 You agree and acknowledge that:
- (a) we will take all due care during the performance of the Services but we will not be liable for any unavoidable minor damage to walls or surfaces surrounding the Services;
  - (b) we will use best endeavours to blend the Services with existing parts of your home (for example, matching tiles, paint colours, fixtures or finishes as closely as possible);
  - (c) some materials may no longer be available, and colours or finishes may have faded or changed over time, meaning we cannot guarantee a perfect match, and we accept no liability for differences in the appearance, colour, texture or components of the Products or the Services from the existing parts of your home; and
  - (d) if an exact match is important to you, you must let us know before we commence the Services, so that we can discuss and agree on the most suitable option.
- 4. PRICE AND PAYMENT**
- 4.1 You agree and acknowledge that:
- (a) while you may be receiving funding from a third party or government authority to help pay for the Services, our Agreement is with you, and not a government authority, plan manager, provider, support coordinator or any other third party;
  - (b) you are responsible for making sure that any funding for the Services is approved, and for paying us in full under this Agreement, even if the funding is delayed, reduced, or not approved;
  - (c) although we will provide quotes, invoices or other information necessary to support your funding application, we will not be involved in that process and cannot guarantee any outcome; and
  - (d) if you're waiting on funding approval, you must let us know before we commence the Services so we can agree on how to proceed.
- 4.2 We will claim payment for the Price in accordance with the milestones set out in the Quotation and/or the Agreement Details by:
- (a) submitting payment claims via the appropriate government authority portal;
  - (b) submitting invoices to your authorised provider or plan manager; or
  - (c) submitting invoices directly to you.
- 4.3 If no milestones are stated, we will submit invoices to you weekly.
- 4.4 Each payment claim or invoice will set out details of:
- (a) the portion of the Services carried out or to be carried out by us in the period to which the payment claim relates;
  - (b) the amount that we claim for payment for that portion of the Services; and
  - (c) any other amount arising out of the Agreement that we claim for payment, including any reimbursable expenses.
- 4.5 You acknowledge and agree that, to the extent allowed by law:
- (a) even if you terminate this Agreement, you must pay the Price in full for any customised Products that cannot reasonably be on sold or returned to the manufacturer; and
  - (b) we will not refund any advance payment made in relation to customised Products.
- 4.6 The total amount claimed for payment under clause 4.2 must be paid by the time stated in the invoice, or if no time is stated, within 28 days of the submission of the invoice.
- 4.7 You must make all payments or ensure all payments are made free of any set-off or counterclaim and without any deduction or withholding.
- 4.8 We may charge interest if any payment is not made by the due date. Interest will be calculated on the daily balance at 10% per annum from the due date until full payment of the overdue amount is received.
- 4.9 You must pay all costs and expenses that we incur in enforcing our rights under these Terms. This may include commission and fees payable to a mercantile collection agent or solicitor.
- 4.10 If any payment is not made when due, we may suspend the Services until payment is received, or alternative arrangements acceptable to us are agreed.
- 4.11 Unless stated otherwise, the amount of payment for any taxable supply under this Agreement has been calculated exclusive of goods and services tax and will be increased by the amount of any goods and services tax.
- 4.12 We reserve the right to assign our entitlements to payment under this Agreement and/or to employ the services of a debt collector if any fees remain unpaid 7 days after they were due.
- 4.13 We retain title to and ownership of the Products until you have paid the Price and all other monies you owe us.
- 4.14 Until title passes to you, you hold the Products on our behalf. You must return the Products to us if we ask you to, failing which we may repossess the Products.
- 4.15 You must allow, or obtain rights for, us to enter any premises where the Products are kept so that we can exercise our right to repossess the Products under clause 4.14.
- 5. VARIATIONS AT YOUR REQUEST**
- 5.1 If you wish to vary the Services set out in the Quotation, you must give us written notice describing the variation that you request.
- 5.2 After you give us written notice under clause 5.1, we will give you a written notice that either:
- (a) states that are unable to carry out the variation and the reason for that inability; or
  - (b) states that we will carry out the variation and if so:
    - (i) states the effect the variation will have on the Services as a whole;
    - (ii) whether or not an amendment to any permission will be required;
    - (iii) gives a reasonable estimate of any delay in completing the Services; and
    - (iv) states the cost of the variation and the effect of that cost on the Price.
- 5.3 We will not commence any variation until you have provided written approval of the matters stated in the variation notice that we have given you under clause 5.2.
- 5.4 If a variation under this clause 5 results in a decrease to the Price, the amount of the variation will be deducted from the

- next invoice or the final invoice (whichever is applicable), unless otherwise agreed.
- 5.5 If we agree to carry out a variation under this clause 5, you agree and acknowledge that you must pay us:
- the agreed variation price; or
  - if no price has been agreed for the variation, the documented cost of carrying out the variation plus a margin of 15%.
- 6. GRAFTON GENERAL PRODUCTS VARIATIONS**
- 6.1 If we wish to vary the Services, we will give you a written notice that:
- describes the variation, including the price of the variation; and
  - states why we wish to make the variation.
- 6.2 We will vary the Services under clause 6 if:
- you have provided written consent (including by email, text message or signing documentation that we give to you); or
  - a building surveyor or other authorised person issues a building notice or order under the *Building Act 2011* (WA) requiring the variation to be made, and:
    - the variation arose as a result of circumstances beyond our control;
    - we have given you a copy of the building notice or building order, with the notice required by clause 6.1; and
    - you do not notify us in writing within 5 business days of receiving the notice that you wish to dispute the building notice or building order.
- 6.3 The Price will be adjusted by the agreed or stated price of the variation. We will claim the adjustment in our next invoice or payment claim following the written variation agreement or the notice given under clause 6.2(b).
- 7. EXTENSION OF TIME AND DELAY COSTS**
- 7.1 We will be entitled to an extension of any date for completion if the progress of the Services is delayed by any of the following:
- variations to the Services, including the time for reaching signed agreement on a variation;
  - inclement weather or Site conditions resulting from inclement weather;
  - an act or omission by you, your agents, representatives, employees or other contractors engaged by you;
  - a shortage or delay in the delivery of materials or availability of labour required for the Services, that is outside of our reasonable control;
  - your failure to ensure that we have unobstructed access to the Site, free of any hindrances, by the Access Date or any other agreed date; or
  - any other matter, cause or thing that is beyond our reasonable control.
- 7.2 We will notify you promptly if we become aware of a delay, detailing:
- the reason for the delay;
  - the period during which the carrying out of the Services is or will be delayed; and
  - the extension required to any date for completion.
- 7.3 If the Services are delayed for reasons outside of our reasonable control, including late cancellation or failure to provide unobstructed access to the Site, we may charge you for the reasonable costs that we incur as a result of the delay, including:
- the costs of additional call outs or rebooking our Personnel; and
  - the Price of any customised Products that cannot be on sold or returned to the manufacturer.
- 7.4 We will claim such costs in our next payment claim following the remobilisation or rebooking.
- 8. CONFIDENTIALITY AND PRIVACY**
- 8.1 The recipient of any confidential information connected with the Services, the Agreement or its subject matter must:
- keep that information confidential, except as necessary to disclose to professional advisers or where disclosure is required by law; and
  - not use the information in any way other than for the Services or as otherwise contemplated by the Agreement, without the prior written permission of the disclosing party.
- 8.2 We will collect, process and store any Personal Information (as defined in the *Privacy Act 1988* (Cth)) disclosed to us in the course of the Services so that we comply with all relevant privacy laws.
- 8.3 By accepting our Quotation, you consent to us photographing the Services and using the images for marketing and other purposes, provided the photographs do not identify you or your home. You can opt out of this consent at any time by written notice to us.
- 9. INTELLECTUAL PROPERTY**
- 9.1 All intellectual property rights created in the design and manufacture of the Products and the performance of the Services vest in us from the moment of creation. We grant you a non-exclusive, transferable, revocable licence to use those rights for the purpose of enjoying the benefit of the Agreement.
- 10. INSURANCE**
- 10.1 We will effect and maintain the following insurance policies:
- any insurance required by law or prudent commercial practice;
  - against statutory and common law liability for death of or injury to persons employed by us; and
  - public liability insurance;
- 10.2 If requested, we will provide broker-issued certificates evidencing the currency of our insurance coverage.
- 11. WARRANTIES**
- 11.1 We provide a defects liability warranty with respect to installed Services for the period stated in the Quotation, or if no period is stated, for 12 months following completion of the Services.
- 11.2 During the defects liability warranty period and on receipt of a written defects notice issued within 14 days after you become aware of a fault or defect, we will rectify any part of the installation works that is faulty or defective.
- 11.3 Our obligation to rectify faulty or defective Products or Services does not apply where the damage was caused by:
- an act or omission by you or your Personnel including modifications or repairs carried out by you or your Personnel;
  - matters outside our control, including misuse, accidents, vandalism, exposure to abnormally corrosive conditions, or damage caused by extreme weather events;
  - improper or unauthorised installation, use or relocation of or modifications to the Products;
  - normal wear and tear;
  - the use of third-party components or materials that we have not supplied or whose use we have not authorised; or
  - your failure to perform routine maintenance that we instruct you to perform or that you should reasonably have known you should perform.

## 12. LIABILITY

- 12.1 If we act wrongfully or negligently in a way that causes damage, we will either fix the damage or cover the reasonable cost of having it fixed.
- 12.2 We are not responsible for any unavoidable loss or damage caused by things outside our control, including faulty materials we didn't supply, fair wear and tear, acts or omissions by or instructions from you or your employees, agents, representatives or other contractors, or unexpected conditions at your property.
- 12.3 We will take reasonable precautions in carrying out the Services. However, we accept no liability in respect of:
- (a) the structural integrity of any structure on which the Services are to be performed;
  - (b) any loss, cost or damage associated with installing third party goods that you or your Personnel provide;
  - (c) any effect that performance of the Services has on any relevant warranty;
  - (d) unavoidable damage that occurs in the course of carrying out the Services;
  - (e) how the Products are used after we have completed the Services;
  - (f) any damage to the Site or the Services which is not due to our negligence or breach of this Agreement; and
  - (g) in the case of non-slip treatments, any replacement or re-tiling of treated areas except to the extent that the treatment does not comply with this Agreement.
- 12.4 Subject to clauses 12.2 and 12.3, we will indemnify you against any loss, damage, injury or death arising out of our negligent acts or omissions in the performance of the Services under this Agreement, except to the extent that such loss, damage, injury or death is caused or contributed to by you, your agents or other contractors.
- 12.5 Our liability to you for any loss or damage connected with a breach of this Agreement, or in tort, or for any other common law or statutory cause of action arising out of this Agreement will (except to the extent prohibited by law) be limited to reperforming the Services or the Price, whichever is the lesser.
- 12.6 Neither of us is liable to the other in respect of any indirect or consequential loss, damage, cost or liability of any kind (including negligence) which may be suffered in connection with the performance or non-performance of this Agreement, including any economic loss, loss of revenue, profit or anticipated profit, loss of contract, loss of production, loss of product, loss of use of property or business interruption.
- 12.7 Risk in the Products passes to you on incorporation of the Products into the Services. Title in the Products passes to you on payment in full of the Price.

## 13. TERMINATION

- 13.1 This Agreement may be terminated at any time by written agreement between us.
- 13.2 Either of us may terminate this Agreement:-
- (a) if the other is in default of the terms and conditions of this Agreement and fails to remedy the default within 14 days after receiving written notice of the default; or
  - (b) immediately if the other party files for bankruptcy, enters into liquidation, is acquired by another entity or becomes insolvent or is deemed to be insolvent under the *Corporations Act 2001* (Cth); or
  - (c) for any reason on 28 days' written notice.
- 13.3 If the Agreement is terminated under this clause 13:
- (a) you must pay us for:
    - (i) any supply of Products and/or Services performed up to the date of termination, including any order of customised Products that cannot be returned to the manufacturer or otherwise onsold;
    - (ii) except if we terminate the Agreement under clause 13.2(c):

- (A) any balance of the Price that remains outstanding;
- (B) the cost of materials reasonably ordered (which we are liable to accept and pay for) or made by us or other costs that we reasonably incur in anticipation of carrying out the Services;
- (C) any reasonable costs arising from the termination, including demobilising from Site; and

- (b) any loss, liability, cost or expense that we incur due to the termination will be a debt due from you to us on demand.

13.4 Termination of this Agreement does not affect or prejudice any of our rights accrued before the termination, or release either party from obligations under the Agreement that by their nature survive termination, including all warranties and obligations of indemnity or confidentiality and our right to recover any payment. The exercise of our rights under this clause 13 does not affect or limit our ability to exercise any other rights under the Agreement, at law or in equity.

13.5 You have no claim against us and we accept no liability to you for any loss, liability, cost or expense which you may incur as a result of termination of this Agreement.

## 14. DISPUTE RESOLUTION

- 14.1 Where a dispute arises in connection with the Agreement, we will attempt to resolve the dispute first by mutual negotiation. If we are unable to reach a resolution of the dispute within 10 days, the dispute will be submitted to mediation in accordance with the Resolution Institute Rules for Mediation.
- 14.2 If we cannot agree on a mediator, either party may request a nomination from the Resolution Institute.
- 14.3 The costs of the mediation will be dealt with as follows:
- (a) the costs of each of the parties must be borne by the party that incurred them; and
  - (b) the fees and expenses of the mediator and any costs of the mediation must be shared equally between the parties.
- 14.4 Nothing in this clause 14 prevents either party from commencing proceedings to seek urgent injunctive or declaratory relief or us from commencing proceedings at any time to recover unpaid Price.

## 15. GENERAL

- 15.1 This Agreement is the entire agreement between us with respect to its subject matter and supersedes all prior oral or written representations and agreements.
- 15.2 This Agreement can only be amended in writing signed by both of us.
- 15.3 We may assign or subcontract any or all of the Services. You may not assign your rights or obligations arising under this Agreement without our prior written consent.
- 15.4 Nothing in this Agreement creates a relationship of employer and employee, principal and agent, partnership or joint venture between us or between us and any third party including your employees, subcontractors or other personnel.
- 15.5 Neither of us has authority to act for or to bind or incur liabilities on behalf of the other unless we agree otherwise in writing.
- 15.6 A waiver by either of us of a breach of this Agreement does not constitute a waiver of any succeeding breach of the same or any other provision.
- 15.7 If any part of this Agreement is invalid or unenforceable, that provision will be deemed deleted but only to the extent necessary. The remaining provisions of the Agreement will remain in full force and effect.
- 15.8 This Agreement is governed by the laws of Western Australia. We both submit to the non-exclusive jurisdiction of the courts of Western Australia.

## **16. INTERPRETATION**

16.1 Capitalised terms used in this Agreement have the meaning given to them in the Agreement Instrument or the Agreement Details or as set out in this clause 16, as the context requires.

16.2 The terms defined below have the same meanings when used throughout this Agreement:

“Agreement” means the agreement between us under which we will supply the Products and/or Services, and is made up of the following documents in order of precedence:

- (a) the Quotation;
- (b) the Agreement Details;
- (c) these Terms; and
- (d) any other documents attached or referred to in this Agreement in the order in which they are attached or referenced.

“Products” means the goods to be supplied and installed by us, as described in the Quotation;

“Personnel” means contractors, consultants, servants, agents, officers and employees.

“Site” means the site for the Services stated in the Quotation or the Agreement Details.

“Quotation” means a written proposal from us setting out the Products that we will supply and any Services that we will carry out, the Price and the terms of our engagement;

“Services” means the installation works to be carried out by us as described in the Quotation;