

TERMS & CONDITIONS

Balcony Gardens *by* DEEPDALE



These terms and conditions (**Terms**) apply to all orders placed with and supplies of goods and services by, Campbell Harris Pty Ltd ABN 91 650 436 276 trading as Balcony Gardens by Deepdale (**we, us, our** or **Balcony Gardens**).

1. Quotation, Order and Acceptance

- 1.1 Balcony Gardens will provide a quotation (**Quotation**) setting out the description of goods and/or services (**Goods and Services**) to be provided to you (**Customer**), and the price) for the Goods and Services (**Price**). Quotations remain open for acceptance for seven days.
- 1.2 By accepting a Quotation or submitting an order for Goods and Services, the Customer agrees to adhere to these Terms. These Terms and an accepted Quotation or order constitute a contract between Balcony Gardens and the Customer. The only terms which are binding upon Balcony Gardens are those set out in these Terms or otherwise agreed to in writing by Balcony Gardens, and those (if any) which are imposed by law and which cannot be excluded.
- 1.3 We may, in our absolute discretion, withdraw a Quotation, or accept or reject any order received. If an order we have accepted is subsequently cancelled by the Customer, the Customer must reimburse Balcony Gardens for Balcony Gardens' reasonable costs and losses incurred.

2. Invoicing, Price and Payment

- 2.1 The Price will be as set out in a Quotation. GST and other taxes and duties that may be applicable will be added to the Price (unless expressly included in the Price). We may change the Price if the Customer varies a Quotation or order.
- 2.2 Unless our Quotation states otherwise, payment terms are 30% deposit (payable within seven days of invoice following order or acceptance of Quotation), with the balance payable within seven days of invoice (issued on or following delivery of Goods and Services).
- 2.3 Where we are required to perform Services (including maintenance) over a period of time rather than on a single occasion, we may send invoices either monthly or in accordance with a payment schedule set out in a Quotation. Payment terms are seven days from date of invoice.
- 2.4 If the Customer defaults in making any payment due to Balcony Gardens under these Terms, Balcony Gardens may in its absolute discretion do any or all of the following:
 - (a) charge the Customer interest on the overdue amount at the rate of 10% per annum (calculated and accruing daily);
 - (b) cancel all or any part of the Customer's order which remains unfulfilled; and
 - (c) demand that all amounts owing to Balcony Gardens by the Customer are immediately due.
- 2.5 The Customer indemnifies Balcony Gardens from and against all costs and disbursements incurred by Balcony Gardens in pursuing its debts (including legal costs on a solicitor and own client basis and collection agency costs).

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2.6 Balcony Gardens may apply the Customer's payments in any order it sees fit and may, without limitation, apply amounts towards enforcement and collection costs, legal fees and interest payments before principal.

3. Delivery

3.1 Any delivery date specified for delivery of Goods and Services is approximate only, and Balcony Gardens is not liable for any delay, provided that efforts are used to deliver Goods and Services within a reasonable period of time.

3.2 Risk in the Goods passes to the Customer at the time the Goods are taken out of our control.

3.3 Title to the Goods passes to the Customer once the Customer has made payment in full for the Goods.

4. Excluded Services

Balcony Gardens does not offer: (a) tree lopping, cutting or removal services where the tree exceeds 5 metres (or 2 stories in height); or (b) spray painting services.

5. Warranties and Limitation of Liability

5.1 All Goods are supplied "as is" and Balcony Gardens does not give any express representation or warranty in relation to the Goods. We do not accept returns for any reason other than where the Goods are materially defective.

5.2 Balcony Gardens does not give any express representation or warranty in relation to the Services.

5.3 To the greatest extent permitted by law, Balcony Gardens will not be liable for any loss, damage, cost, injury, harm or expense of any kind (including without limitation, consequential loss) arising from the supply of the Goods and Services to the Customer. The Customer agrees to exclude all warranties implied by law which may lawfully be excluded.

5.4 Balcony Gardens accepts liability for warranties implied under the Australian Consumer Law (ACL) or under any other legislation the effect of which cannot be lawfully excluded. If the Customer acquires Goods or Services ordinarily acquired for personal, domestic or household use or consumption, or Goods or Services cost no more than \$40,000 (or such other amount specified by law), the Customer has rights, and our Goods and Services come with guarantees that cannot be excluded, under the ACL. Nothing in these Terms affects the Customer's rights under the ACL.

5.5 To the extent permitted by law, Balcony Gardens' total liability to the Customer in respect of all claims, damage and losses arising under or in connection with the Goods and Services supplied to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will under no circumstances exceed the price of the Goods and Services supplied to the Customer that the Customer has already paid, and of any other costs and charges paid by the Customer to Balcony Gardens in connection with the Goods and Services.

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6. Intellectual Property

The Customer does not acquire any intellectual property rights in any drawings, designs or information that Balcony Gardens makes available to the Customer in connection with its supply of Goods and Services to the Customer.

7. General

- 7.1 Balcony Gardens may amend these Terms at any time and the updated Terms will apply to all Quotations and orders for Goods and Services following the change.
- 7.2 The obligations of Balcony Gardens are suspended, and Balcony Gardens is not liable for a failure to perform, during the time and to the extent that Balcony Gardens is prevented from complying with its obligations by the occurrence of any event beyond Balcony Gardens' reasonable control.
- 7.3 These Terms are governed in all respects by the law of Victoria, Australia and the parties submit to the jurisdiction of the courts of Victoria and Australia.
- 7.4 The Customer is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Balcony Gardens nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.5 The failure by Balcony Gardens to enforce any provision of these Terms will not be treated as a waiver of that provision, nor will it affect Balcony Gardens' right to subsequently enforce that provision.