
D & S Karp Pty Ltd T/A Burglar Liquid Waste – Terms & Conditions of Trade

1. Definitions

- 1.1 “Burglar” shall mean D & S Karp Pty Ltd (as trustee for the D & S Karp Family Trust) T/A Burglar Liquid Waste, its successors and assigns or any person acting on behalf of and with the authority of D & S Karp Pty Ltd (as trustee for the D & S Karp Family Trust) T/A Burglar Liquid Waste.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Burglar to the Client.
- 1.3 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Services” shall mean all Services supplied by Burglar to the Client and includes any advice or recommendations.
- 1.5 “Price” shall mean the price payable for the Services as agreed between Burglar and the Client in accordance with clause 4 of this contract.

2. The Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client buys Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

3. Acceptance

- 3.1 Any instructions received by Burglar from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by Burglar shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Burglar.
- 3.4 The Client shall give Burglar not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Burglar as a result of the Client’s failure to comply with this clause.
- 3.5 Services are supplied by Burglar only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At Burglar’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Burglar to the Client in respect of Services supplied; or
 - (b) Burglar’s quoted Price (subject to clause 4.2) which shall be binding upon Burglar provided that the Client shall accept Burglar’s quotation in writing within thirty (30) days.
- 4.2 Burglar reserves the right to change the Price in the event of a variation to Burglar’s quotation.
- 4.3 At Burglar’s sole discretion:
 - (a) a deposit may be required; and/or
 - (b) payment shall be due on, or before, delivery of the Services; or
 - (c) detailed progress payment claims may be submitted by Burglar in accordance with the specified payment schedule. Such payment claims may include the reasonable value of authorised variations.
- 4.4 Time for payment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), direct credit, or by any other method as agreed to between the Client and Burglar.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.7 Burglar and the Client agree that the Client’s obligations to Burglar shall not be deemed completed until:
 - (a) the Client has paid Burglar all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to Burglar.
- 4.8 Receipt by Burglar of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Burglar’s ownership or rights in respect of the Price, and this contract, shall continue.

5. Delivery of the Services

- 5.1 At Burglar’s sole discretion delivery of the Services shall take place when Burglar undertakes the Services at Burglar’s nominated site.
- 5.2 At Burglar’s sole discretion any costs of delivery are in addition to the Price.
- 5.3 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

D & S Karp Pty Ltd T/A Burglar Liquid Waste – Terms & Conditions of Trade

- 5.4 Burglar shall not be liable for any loss or damage whatsoever due to failure by Burglar to deliver the Services (or any of them) promptly or at all due to circumstances beyond the control of Burglar, nor shall such delay entitle the Client to consider this agreement repudiated.
- 6. Risk**
- 6.1 All risk for the Services passes to the Client on delivery of the Services.
- 6.2 Where the Client expressly requests Burglar to collect waste products from an unattended location then such waste products shall be collected at Burglar's sole risk (refer clause 7).
- 7. Access**
- 7.1 The Client shall ensure that Burglar has clear and free access to the nominated site at the time of delivery to enable them to undertake the Services. Burglar shall not be liable for any loss or damage to the site during and after the Services (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas, and site equipment, such as septic tanks) unless due to the negligence of Burglar. The Client acknowledges that any claim made to Burglar for damage to the site or site equipment, must be lodged with Burglar within twelve (12) hours of completion of the Services.
- 7.2 Burglar reserves the right to refuse to enter the nominated site to undertake the Services in the event that Burglar believes the site to be unsafe. In this event, the Client agrees that it is their responsibility to ensure the site is made safe before Burglar will enter the site, Burglar shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
- 8. Errors and Omissions**
- 8.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify Burglar of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford Burglar an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which Burglar has agreed in writing that the Client is entitled to reject, Burglar's liability is limited to either (at Burglar's discretion) replacing the Services or rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services, or replacement of the Services.
- 9. Default and Consequences of Default**
- 9.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Burglar's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 9.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Burglar.
- 9.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Burglar from and against all costs and disbursements incurred by Burglar in pursuing the debt including legal costs on a solicitor and own client basis and Burglar's collection agency costs.
- 9.4 Without prejudice to any other remedies Burglar may have, if at any time the Client is in breach of any obligation (including those relating to payment) Burglar may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. Burglar will not be liable to the Client for any loss or damage the Client suffers because Burglar has exercised its rights under this clause.
- 9.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of fifty dollars (\$50.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 9.6 Without prejudice to Burglar's other remedies at law Burglar shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Burglar shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to Burglar becomes overdue, or in Burglar's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 10. Security and Charge**
- 10.1 Despite anything to the contrary contained herein or any other rights which Burglar may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Burglar or Burglar's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor

D & S Karp Pty Ltd T/A Burglar Liquid Waste – Terms & Conditions of Trade

acknowledge and agree that Burglar (or Burglar's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should Burglar elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Burglar from and against all Burglar's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Burglar or Burglar's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.

11. Cancellation

- 11.1 Burglar may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice Burglar shall repay to the Client any sums paid in respect of the Price. Burglar shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by Burglar (including, but not limited to, any loss of profits) up to the time of cancellation.

12. Privacy Act 1988

- 12.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for Burglar to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Burglar.
- 12.2 The Client agrees that Burglar may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 12.3 The Client consents to Burglar being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 12.4 The Client agrees that personal credit information provided may be used and retained by Burglar for the following purposes (and for other purposes as shall be agreed between the Client and Burglar or required by law from time to time):
 - (a) the provision of Services; and/or
 - (b) the marketing of Services by Burglar, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 12.5 Burglar may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 12.6 The information given to the credit reporting agency may include:
 - (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Burglar is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Burglar, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by Burglar has been paid or otherwise discharged.

13. Building and Construction Industry Security of Payment Act 2002

- 13.1 At Burglar's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 13.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

14. General

- 14.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 14.3 Burglar shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Burglar of these terms and conditions.
- 14.4 In the event of any breach of this contract by Burglar the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price.
- 14.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Burglar nor to withhold payment of any invoice because part of that invoice is in dispute.
- 14.6 Burglar may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 14.7 Burglar reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Burglar notifies the Client of such change. The Client shall be under no obligation to accept such changes except where Burglar supplies further Services to the Client and the Client accepts such Services.
- 14.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 14.9 The failure by Burglar to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Burglar's right to subsequently enforce that provision.