

**Landscape Tanks**  
**CliffJack Pty Ltd ABN 30 652 750 135**  
**Conditions of Sale**

Sale of product and all associated pricing / quoting are provided on the following terms.

On receipt of a signed "tank schedule" or on receipt of a deposit from the 'Buyer', the 'Buyer' and the 'Seller' acknowledge agreement to the terms as shown below.

1. **Prices.** All prices are;
  - a. In AUD;
  - b. Are excluding GST unless otherwise expressly indicated so; and
  - c. On the basis of 'ex-works' our contract manufacturer premises 23 Hudson Cres, Albury NSW 2641, unless expressly provided otherwise in writing.
  
2. **Quotes.** Quoted prices are provided and conditional upon:
  - a. Only being binding on the 'Seller' where they are provided in writing;
  - b. Valid for a period of not more than ninety (90) days from the date of issue;
  - c. Are for the nominated party, in the quantities and for the products shown, only; and
  - d. Are subject to change by the 'Seller', without prior notice, where the cost of materials and or labour have appreciated by more than 5%.
  
3. **Loading.** We agree to load trucks on the following basis;
  - a. To have and provide (on request), a loading plan, including a calculation of total weight;
  - b. To perform all loading at our contract manufacturers yard, at our cost;
  - c. To load in accordance with all relevant laws, regulations and good practice; and
  - d. To accede to the 'Buyers' transport companies' reasonable instructions, provided those instructions are clear and not subject to misinterpretation and adhere with all workplace, general safety and our site requirements.
  
4. **General Loading Conditions.** The 'Buyer' and 'Seller' agree;
  - a. That the 'Seller' or their agent(s), will only proceed with loading where they are confident the 'Buyer's' transport operator understands and conforms to the limits and restrictions of their machinery.
  - b. The 'Seller' reserves the right to refuse loading in the event, they or their agent(s);
    - i. Have doubts as to the transport operator's competence;
    - ii. Are concerned about the adequacy of tie down or state of the transport equipment;
    - iii. Have concern over the general manner or approach of the driver; and or
    - iv. There is any other factor, which presents or creates doubt about the load being safe.

All costs incurred as a consequence of us refusing to load a vehicle will be bourn exclusively by the 'Buyer'.

5. **Deposit.** The 'Seller' is a manufacturer who (principally) produces to order. Manufacturing commences on receipt of a deposit from the 'Buyer'. Our standard deposit is 30% of the invoiced sum.

Deposits are not refundable.

Deposits are transferable. The transferable amount will be the deposit paid less any costs reasonably incurred by the 'Seller' to that point and to affect the transfer. What constitutes, "costs reasonably incurred", will be determined by the 'Seller'.

Deposits received will remain in "trust" until production of the goods ordered commences or stock on floor is allocated to the order by the 'Seller'.

The 'Buyer' will forfeit his deposit where;

- a. The 'Buyer' "abandons" goods ordered. Goods will be deemed "abandoned" if not collected by the 'Buyer' within twelve months of the 'Buyers' deposit being made where an "arrangement" for storage and holding of the goods has not been agreed between the 'Buyer' and the 'Seller'. All "arrangements" need to be mutually agreed too and in writing.
- b. 60 days after the 'Buyer' fails to complete one or more of their financial obligations under this agreement.
- c. Where the tanks become subject to a 'holding and storage fee' and those fees remain unpaid for 60 days after their due date.

Where we are unable to supply goods ordered within eight (8) weeks of the deposit being made and a full refund is requested in writing by the 'Buyer', the 'Seller' will cancel the order and return the deposit to the 'Buyer's' nominated bank account within seven (7) days.

6. **Final Payment.** We require payment of the balance owed, in full, in cleared funds, directly to our account by the due date. "Due date" will mean, two working days prior to the arranged loading of the 'Buyers' tanks at the 'Sellers' yard onto the 'Buyers' nominated carrier.
7. **Transfer of Title.** Title will transfer to the 'Buyer' from the 'Seller' on loading of the 'Buyers' carrier. Transfer of title is conditional on the 'Buyers' account having been paid in full and the balance outstanding being zero. The 'Buyers' balance owed will be determined and calculated in accordance with the terms of this agreement. If there is any uncertainty, the balance owed will be deemed to be the amount calculated by the 'Seller' and provided on the 'Sellers' invoice(s) to the 'Buyer'. Risk and insurance while in transit, during site installation and at all times after the tank(s) are loaded onto the 'Buyers' carrier including while the 'Buyers' carrier is in the 'Sellers' yard, are on the 'Buyers' account exclusively.
8. **Holding and Storage Fee.** The 'Seller' will invoice the 'Buyer' based on the 'Buyers' preferred collection date. The collection date will be placed on the 'Buyers' invoice by the 'Seller' and shown as the invoice date.

The 'Seller' will hold the 'Buyers' goods including;

- a) Accepting all risks;
- b) Accommodating all factory holding and storage costs; and
- c) Insuring the goods;

without fee or imposition on the 'Buyer', for a period of ninety (90) days from the invoice date.

For clarity the "free" holding and storage period covers;

- a) The period from the date the deposit is made up to the invoice date; along with
- b) An additional period of ninety (90) days from the invoice date.

This period will be referred to as the "free holding and storage period".

After the “free holding and storage period” has passed, the ‘Buyer’ and ‘Seller’ agree that the ‘Seller’ can at its discretion, charge “holding and storage fees” at the rate of \$25 plus GST per month per “tank”. Where a “tank” will mean a tank and its nominated planter / top.

All ‘holding and storage fees’ incurred including pro rata charges for part of a month, will be added to the ‘Buyers’ invoice(s) or a new invoice. All fees charged will need to be cleared prior to collection of goods.

9. **Insurance.** All insurances needed to be held by the ‘Buyer’ once title passes and the determination as to the risks that need to be covered, will be determined and procured by the ‘Buyer’, at their time and cost.

All insurances needed to be held by the ‘Seller’ while the tanks are in the ‘Sellers’ control (until title passes to the ‘Buyer’), will be determined and procured by the ‘Seller’, at their time and cost.

10. **Inspection of Goods.** Goods can be inspected at any mutually convenient time for both the ‘Buyer’ and ‘Seller’, prior to loading. All inspection dates (and time) need to be convenient to the ‘Seller’s’ contract manufacturer and agreed to in writing by the ‘Seller’ prior to the inspection occurring.

11. **Engineering.** The tanks are manufactured to the engineering provided by the ‘Seller’, based on the assumption of standard and uniform site conditions (soil and rain fall etc), all relevant Australian Standards and engineering principals.

The ‘Seller’ is not an expert in all state and local jurisdictions operating in the Australian nation. The ‘Seller’ has not and does not advise on sites or projects. The ‘Buyer’ in conjunction with his or her advisors (builder, plumber, landscaper, town planner, architect etc) are the local experts and understand their site, local and state regulations and all relevant building codes. Suitability of the tanks to the application proposed and conformance with site and local specific conditions rests solely with the ‘Buyer’.

The ‘Buyer’ acknowledges they have;

- a. Independently determined the suitability of the tanks for their circumstances, if necessary adjusted engineering of the tanks or installation particulars so as to meet their site-specific requirements;
- b. Completed all relevant tests including but not limited to soil test(s) and satisfied themselves as to their site’s suitability for a tank installation;
- c. Determined there is adequate site access for their tank installation;
- d. Hired heavy lifting equipment and or contracted with a competent heavy lifting operator to perform their offload and installation;
- e. The skills or have employed a suitable party to monitor, supervise and complete the installation so as to meet or exceed the installation requirements set out by Landscape Tanks and conform with all applicable legislative, local council, building and applicable practices; and
- f. Complied with all necessary local, state and federal legislation, ordinances, guidelines or other relevant measures including obtaining all council approvals necessary including but not limited to the tank installation and traffic management.

12. **Products.** The ‘Seller’ provides no assurance as to the availability of products due to but not limited to, “Acts of God”. While rare, manufacturing materials may be unable to be acquired, cyclones, industrial action, machinery failure, floods, lack of freight or labour availability and pandemics occur and are out

of the 'Sellers' control. The 'Seller' will not be liable for any failure or delay in performing its obligations, in such circumstances, other than to return deposits promptly upon being requested to do so in writing and or in accordance with the terms of this agreement.

13. **Buyer Default.** Cancellation or default by the 'Buyer' will result in the loss of its deposit. In addition, the 'Buyer' indemnifies the 'Seller' for all of its "costs reasonably incurred" above the deposit amount held as a result of their cancellation (determined solely by the 'Seller') and the 'Buyer' agrees to make payment of any additional amounts owed, within seven (7) days of an account being provided by the 'Seller' to the 'Buyer' of the "costs reasonably incurred" and the balance owed.
14. **Seller's Warrantees.** The 'Seller' warrants products manufactured by it against manufacturing defects for a period of twenty five (25) years for the concrete structure and seven years (7) for all other components. We warrant that our manufacturing meets and complies with all relevant Australian standards, local, state and federal legislation.

This warrantee is provided on the basis of the goods being handled, installed and used in accordance with all of the 'Sellers' guidelines, Australian standards and good general practice.

The 'Buyer's' exclusive remedy, if any, under these warranties is limited to at the 'Seller's' election, either (a) a refund of the 'Buyer's' purchase price, to the extent of a valid claim, or (b) replacement of product, to the extent of a valid claim.

The 'Seller' also warrants that;

- a) All goods are manufactured to all relevant Australian Standards including but not limited to AS 3600 and if specified AS 3996.
  - b) The finish on the tanks will meet or exceed AS 3600 class 2.
  - c) Are in accordance with the specifications scheduled by the 'Seller' in its tank schedule(s).
  - d) Are materially exactly or practically identical to promotional material provided by the 'Seller'.
  - e) Will perform as advertised as water storage and retaining to the extent indicated by the 'Seller'.
  - f) The lifting lugs (pin head lifts) have been installed, cured and are certified for the lifting purpose intended for the tanks and tops in which they have been placed, but only so where the lifting lugs (pin head lifts) have been used as per the manufacturer's specifications.
15. **Claims.** Claims for defects and or incorrect supply, will only be recognised if received in writing from the 'Buyer' within fourteen (14) days of collection of goods from the 'Sellers' agents yard. The 'Buyer's' exclusive remedy, if any, under this warrantee is limited to, at the 'Seller's' election, either (a) a refund of the 'Buyer's' purchase price in part or whole, to the extent of a valid claim, (b) replacement of the product(s), to the extent of a valid claim, or c) provision of parts to the 'Buyer' which allow the 'Buyer's' subcontractor or the 'Buyer' or the 'Buyers' agent, to rectify the fault, with only the 'Seller's' general subcontractor rates as determined by the 'Seller' recoverable by the 'Buyer' and only to the extent these costs, both parts and subcontractor combined, are capped at and don't exceed the 'Buyer's' purchase price.
16. **Limit of Liability.** The 'Buyer' acknowledges that except as specifically set forth or referenced in the 'Sellers' engineering and for water storage or as provided for under Australian law, there have been no representations or warranties of any kind expressed or implied in the correspondence and material provided to the 'Buyer', condition or performance, fitness, purpose or otherwise. Regardless of the circumstances the 'Seller' will only be liable to return goods to their warranted condition capped to the

value of the invoiced sum and will not be liable to the 'Buyer' for any and all other special, incidental, direct and indirect, punitive or consequential damages.

17. **Buyer's Warrantee.** The 'Buyer' shall indemnify and hold the 'Seller' harmless from and against any and all claims, actions, suits, proceedings, costs, demands, damages and liabilities of any nature, relating to or in any way arising from the 'Buyer's' transportation, rejection, possession, use, storage, installation, control or disposal, their subsequent failure arising from inappropriate, unwise or misuse, and including any site specific or related conditions.

18. **Agreement.** In the event there has been;

- a. No formal written notice by the 'Buyer', or
- b. Where such written notice is not provided to [operations@landscapetanks.com.au](mailto:operations@landscapetanks.com.au), or
- c. The notice has not occurred prior to the payment of the 'Buyers' deposit, or
- d. Where a notice from the 'Buyer' does not clearly state the 'Buyer's' disagreement and or does not have specific reference to this agreement's clauses,

then the parties agree, regardless of whether there is or is not signed acceptance of this agreement, that the 'Seller' is entitled to operate with full confidence and on the basis that this agreement completely and absolutely represents the last and final position reached by the parties.

19. **Jurisdiction.** These terms are subject to the jurisdiction of courts and legislation of the State of New South Wales, Australia. This agreement and its attachments constitute the entire agreement reached between the parties for the procurement of the products and associated services mentioned. No waiver, addition, modification or alteration of this agreement will be valid unless made in writing and signed by an officer of the 'Seller'.

20. **Severable.** In the event that one or more clauses is found to be invalid, unlawful or unenforceable by a court of law then that provision(s) will be deemed to be severed from the remainder of this document (which will remain valid and enforceable).