

KILLAHY GROUP PTY LIMITED ABN 70 610 597 147 of 10 Racecourse Drive, Goulburn, NSW, 2580

1. TERMS AND CONDITIONS OF SUPPLY AND INSTALLATION

These terms and conditions are the contract between you and Killahy Group Pty Ltd. By accepting a quote for supply and/or installation of any of our products by us, you agree to be bound.

"Killahy Group Pty Ltd ABN 70 610 597 147" is a corporation registered in the Commonwealth of Australia and is referred to herein as "Killahy Group" unless otherwise stated.

"Client/customer/buyer" - anyone who uses Our Website or accepts a quote for supply and/or installation of any of our products by us. If you order or accept a quote from Killahy Group, you must do so within 30 days, in default of which, Killahy Group reserves the right to requote). You are bound by these terms & conditions.

2. Sale of Goods and Services Terms and Conditions

These terms and conditions:

- (a) govern every contract for the sale of goods and/or the provision of services by Killahy Group to the Customer, and
- (b) constitute all the terms and conditions agreed among the parties hereto to the exclusion of all the previous written or oral terms and conditions. No variation to these terms and conditions shall bind Killahy Group unless agreed to in writing by Killahy Group's authorised employee.

3 Payment

The terms of payment to Killahy Group are as follows:

- (a) for the supply and installation of any equine infrastructure including but not limited to stables, horsewalkers, treadmills, spa's & equine rubber flooring, payment is strictly 50% manufacturing deposit and full payment before dispatch from factory, unless otherwise agreed, to a maximum of net 7 (seven) days from the date of invoice.
- (b) for the provision of service, payment is strictly 40% prior to mobilisation to site, followed by weekly progress payments with the remainder to be paid, unless otherwise agreed to a maximum of net 7 (seven) days from the date of final service invoice.
- (c) Killahy Group shall be entitled to render to The Customer Progress claims based on a pro rata value of works completed for projects which extend more than 7 days. Payment of such claims are to be paid by The Customer within seven (7) days from invoice.
- (d) Killahy Group reserves the right to cease work until any outstanding claims have been paid in full.
- (e) This is a payment claim made under the Building and Construction Industry Security of Payment Act 1999 NSW.
- (f) Killahy Group and its associated entities reserve the right to register any interests they may have on the personal property securities register.

(g) Should a customer cancel a non-stock order then they will be liable for 100% of the price. Should a customer cancel a stock order, then they will be liable for 10% of the price plus transport & restocking fees.

(h) Killahy Group will hold goods until all payments including transport costs are paid and retain the right to charge for storage should delivery be delayed by more than 7 days by the client.

4 Default & Consequences of Payment Default

(a) Failure to pay within the agreed credit terms will automatically create Stop Credit. Work or supply and will not be re-commenced until payment is received for all amounts outstanding.

(b) If the Customer defaults in payment of any invoice, the Customer shall indemnify Killahy Group from and against all costs and disbursements incurred by Killahy Group in pursuing the debt, including legal costs, on a solicitor and client basis, and Killahy Group Collection Agency costs.

(b) Without prejudice to any other remedies Killahy Group may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Killahy Group may suspend or terminate the supply of goods and services to the Customer. Killahy Group will not be liable to the Customer for any loss or damage the Customer suffers because Killahy Group exercised its rights under this clause.

(e) Without prejudice to Killahy Group's other remedies at law, Killahy Group shall be entitled to cancel all or any part of any order of the Customer, which remains unperformed and all amounts owing to Killahy Group shall, whether or not due for payment, become immediately payable in the event that any money payable to Killahy Group or a its associated companies becomes overdue, or in Killahy Group's opinion, the Customer will be unable to meet its payment obligations as they become due including if the Customer 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 (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

5 Overdue accounts and security

(a) Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.

(b) The Customer agrees to pay all costs and expenses Including legal costs, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause (c).

(c) As security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to Killahy Group.

(d) Without limiting the generality of the charge in clause 4(c), the Customer, agrees, on request by Killahy Group to execute any documents and do all things reasonably required by the Supplier, Including if a beneficial owner, as beneficial owner under the Conveyancing Act 1919 (NSW) or of any analogous implied term under the applicable governing law) to perfect the charge given in clause 4 (c) including registering a mortgage security over any Real Property "The Customer appoints Killahy Group to be the Customer's lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard. The Customer indemnifies Killahy Group on an indemnity basis against all costs and expenses incurred

by the Supplier in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.

(e) The Customer consents unconditionally to the Killahy Group lodging a caveat or caveats noting its interest in any Real Property.

(g) A statement in writing signed by an authorised officer of the Supplier or Killahy Group setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

(h) The Supplier acknowledges that any payment made to Killahy Group for a debt owed to the Supplier is in full satisfaction of the debt owed to it, to the extent of the payment made.

6. Quotations and Prices

(a) Any quotation given by Killahy Group is a mere invitation to treat and does not constitute a contractual offer. All quotations shall be valid for 30 (thirty) days after issue; however, Killahy Group may withdraw a quotation at any time.

(b) Prices included in the quotation are based on the specification, scope, drawings and/or requests by the Customer. Should the specification or Customer's request change, then Killahy Group reserves the right to vary the quotation price.

(c) All quoted prices are exclusive of GST unless otherwise stated.

7. Delivery

(a) The times quoted for delivery are estimates only and Killahy Group accepts no liability for delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods because of any delay in delivery. Goods may be delivered by instalments at the discretion of Killahy Group.

(b) Risk in the Goods passes to the Customer on delivery.

(c) Killahy Group, if requested to enter a property, accepts no responsibility for any damage caused by Killahy Group or its agents. The Customer shall indemnify Killahy Group and hold Killahy Group and its agent harmless against any charges or costs of whatsoever nature incurred as a result of or arising out of Killahy Group or its agent's vehicle entering the property.

(d) all customers are bound by all shipping terms & conditions issued by all shipping lines and/or their freight forwarders associated agents including but not limited to Maersk, China Shipping, CGM CMA, Mediterranean Shipping Company & Hapag Lloyd.

(e) Killahy Group customers agree to be bound by any terms & conditions that apply to Killahy Group by any shipping line, freight forwarder or local carrier/transport company or courier. Killahy Group customers agree they shall have no entitlement should any changes in estimated delivery times occur.

(f) Customers agree to pay any increase in transport costs incurred by Killahy Group if it is more than 5% of the quoted price. Killahy Group reserves the right to use previous prices paid for shipping for a period of up to 90 days before quote submission to the client.

(g) Clients do not have any right to claim for delayed delivery, nor any costs associated with it whatever the cause.

(h) Clients agree to be bound by all terms & conditions of Killahy Group Annual Cargo Insurance Policy Provided by Allianz Australia Insurance Limited – Policy Number 171Q008866CMC

- (i) Killahy Group insists on a live container/truck unload and will charge for any time over 3 hours on site at our suppliers' nominal rates. Should clients need containers dropped & left on site, Killahy Group will need 48 hours' notice to pick up an empty container – note this may lead to detention charges from our shipper's/Freight forwarders which will be passed on at cost plus a minimum \$35 admin cost or 10% of the fees whichever is the lessor. Appropriate plant & resources to unload containers/trucks will be the responsibility of the client and Killahy Group will accept no liability for any damage to goods while unloading.
- (j) Killahy Group will pass on any Quarantine or AQIS inspection or fumigation charges to Clients. Killahy Group will not be liable for any detention costs from the shipping line at cost plus admin fees.
- (k) Killahy Group will never organise unloading of any cargo and/or containers at the customers' location unless expressly agreed. Killahy Group will give updates on delivery dates of trucks & containers to the customer and customers will be responsible for unloading all cargo. Killahy Group will need minimum 7 days' notice if the client wishes Killahy Group to organise the unloading of any cargo/container on site. Costs will include plant personnel & travel costs to the client's location.
- (l) Killahy Group will on charge any detention or demurrage charges incurred from the shipping line at cost.
- (m) Should clients wish to pick up any goods from Killahy Group at our premises or a leased premises, all personnel must comply with site rules & regulations and must only arrive at previously agreed times with Killahy Group Personnel
- (n) Killahy Group will not be held liable for wharf storage charges incurred due to unavailability of time slots before container storage free time expires at the terminal. Accrued wharf storage charges must be paid by the customer prior to collection of containers from the wharf, i.e. - busy shipping periods and times of industrial action at port of discharge.
- (o) The shipping lines Free Time are based on 8 days from discharge of the container to the wharf. Shipping line detention charges will apply after this time at the rates provided by each carrier plus a \$35 admin fee.
- (p) Killahy Group requires that each client fill out Delivery Information form 14 days before scheduled delivery to site. Failure to do this will result in a delay in delivery and Killahy Group reserve the right to hold delivery until this delivery information is supplied. Killahy Group will rely on this information and will base delivery of goods on this information. Killahy Group will not be liable for any information given incorrectly or not disclosed. Killahy Group will use the site delivery information as a guide for optimum delivery to site but will not be held liable for any expenses or damages associated with delivery.
- (q) Killahy Group recommends storage of all prefabricated materials under a roof and accepts no liability for any weather damage.

8. Installation

- (a) The Customer shall always supply water and power during the installation. If these are not supplied The Customer shall be liable for any costs incurred by Killahy Group.
- (b) The Customer is responsible for the clearing of the site of all obstruction, rubbish, reticulation, vegetation and other hindrances unless included in Killahy Group's written Quotation.

- (c) Prior to the commencement of work, The Customer shall;
- (i) Locate and identify all underground obstructions including but not limited to, telephone lines, power lines, gas, water and storm water lines.
 - (ii) Ensure that all boundary and survey pegs are in the correct position and approve the set out by Killahy Group's agent prior to the commencement of work. The Customer shall fully indemnify from all actions and penalties as a result of failing to do so.
 - (iii) Shall secure all pets and animals and for the protection of all plants, ornaments, ponds, fixtures and other infrastructure. Whilst Killahy Group will exercise "all care" no responsibility will be accepted for any losses or claims by third parties.
 - (iv) Obtain at their own expense all permits required by the Council and other authorities and shall fully indemnify Killahy Group from all actions and penalties as a result of failing to do so.
 - (v) Obtain access rights from the adjoining neighbours where a common boundary will be involved.
- (d) Concrete undulations may create the need for gaps under the panels, gates and doors, Killahy Group will make every endeavor to keep these to a minimum but does not warrant that these will be eliminated.
- (e) Killahy Group reserves the right to use its associated company Killahy Constructions Pty Limited for installation of all goods on site and reserve the right to bill the client through Killahy Constructions Pty Ltd

9 Killahy Group Pty Ltd Warranty and Claims

- (a) Service under warranty shall only be available between the hours of 7.30am to 3.30pm Monday to Friday, and exclude public holidays, and exclude routine maintenance service including misuse of equipment, lack of routine maintenance or operator error.
- (b) Warranty for the purpose of this clause is either:
- (i) Installation warranty: a guarantee of workmanship and associated materials on new installations for a period of 6 (six) months, whereby Killahy Group will repair the product in the event of any defect,
 - (ii) Service warranty; a guarantee of workmanship for service repair work for a period of 3 (three) months, where the work will be performed again in the event of any defects associated with the initial service work.
- (c) All costs of freight and travelling expenses associated with making a claim under this warranty are to be paid by the Customer.
- (d) If the Goods come with guarantees that cannot be excluded under the Australian Consumer Law, the Customer is entitled to a replacement or refund for a "major failure" and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a "major failure".
- (e) The benefits provided by Killahy Group warranty are in addition to other rights and remedies that you may have under law in relation to the products to which this warranty relates.

- (f) Warranty on goods is subject to the manufacturer's warranty. However, where permissible by law, the customer must pay for all work undertaken in conducting a repair if the manufacturer's assessment determines the claim does not fall within the manufacturer's warranty terms.
- (g) The Customer must provide proof of purchase to make a claim under any warranty.
- (h) Differences in the lustre, colour and roughness of galvanized coatings do not affect the corrosion resistance of the coating and are excluded from any claim under warranty.
- (i) During transport and/or storage the galvanised steel is bundled tightly together, this tight bundling can result in a storage stain if the product comes in contact with any moisture. While we make all efforts to prevent or remove these stains before delivery to the customer, we cannot guarantee that all stains will be removed. These storage stains do not affect the corrosion resistance of the galvanising and are excluded from a claim under warranty.
- (j) Any damage by Australian Quarantine or their agents does not give rise to a warranty claim.

10 Retention of Title

- (a) All equipment supplied and installed by Killahy Group remains the property of the Killahy Group until all monies outstanding to Killahy Group in connection with these Terms and Conditions have been paid.
- (b) It is the intention of Killahy Group and agreed to by the Customer that ownership of Materials & Goods shall not pass until the Customer has met all other obligations due by the Customer to Killahy Group in respect of all contracts between Killahy Group and the Customer.
- (c) In the event of a default by the Customer, then without prejudice to any other rights which Killahy Group may have at law or under this contract:
 - (i) Killahy Group or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
 - (ii) Killahy Group may recover and resell the Goods. If the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Killahy Group may in its absolute discretion seize all Goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Killahy Group and the Customer may be ascertained. Killahy Group must promptly return to the Customer any Goods the property of the Customer and Killahy Group is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
- (d) Receipt by Killahy Group 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 the Killahy Group's ownership or rights in respect of Materials and/or Goods shall continue.
- (e) It is further agreed that:

- (i) where practicable, the Materials and/or Goods shall be kept separate and identifiable until Killahy Group shall have received payment and all other obligations of Killahy Group are met; and,
- (ii) until such time as ownership of the Materials and/or Goods shall pass from Killahy Group to the Customer, Killahy Group may give notice in writing to the Customer to return the Materials and/or Goods or any of them to Killahy Group. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Materials and/or Goods shall cease; and
- (iii) Killahy Group shall have the right to stop the Materials and/or Goods in transit whether or not delivery has been made.

11 No Retention Money

Unless otherwise provided in writing, the Customer shall not be entitled to retain any part of the purchase price by way of retention monies to guarantee satisfactory operation of the equipment supplied and installed.

12 Warranties

All goods are subject to manufactures warranty.

13 Acceptance of our quote becomes the Contract.

All equipment installed shall remain the property of Killahy Group until payment has been received in full. Killahy Group has the right to enter the premises where work has been performed and recover the equipment if default is made on payment.

We take full responsibility for the repair of components installed. However, we do not take responsibility for any consequential damage to property after the installation is complete and the goods have been commissioned, or the customer has used the goods.

Any costs incurred due to poor access to the work area are to be borne by the client.

System maintenance is the responsibility of the owner and should be undertaken regularly in accordance with the manufacturers' recommendations to avoid any damage to property. If the damage is deemed to be from negligence, lack of servicing or misuse by the customer, we will not be held liable for any repairs.

It is acknowledged by the client that the following shall be the sole responsibility of the client to arrange regular servicing.

If in the event a service call is placed and it is found that the equipment is operating normally or malfunctioning due to misuse or negligence by the client or the equipment has not been properly maintained by an authorised person in accordance with the manufacturer's recommendations, the client will pay the cost of the service call together with labour, travel and material costs.

Warranty service will be performed during normal business hours Monday to Friday. Any work requested outside these hours will be charged at "out of hours" rates.

Warranty will not be covered if it is found equipment is damaged by outside influences beyond the control of Killahy Group e.g. vandalism of equipment, flood, fire, lightning strike, modifications to equipment carried out by unauthorised personnel.

In some circumstances planning approval may be required prior to; it is the client's responsibility to determine whether this is the case and to obtain any necessary approvals that may be required. Killahy Group can facilitate all planning approvals but will not do so unless expressly employed by the customer to do so.

Killahy Group is not responsible for any electrical upgrades from the street mains to the switchboard unless specifically quoted for in writing.

Killahy Group is not responsible for structural changes and making good.

To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Killahy Group is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

- (i) any increased costs or expenses.
- (ii) any loss of profit, revenue, business, contracts or anticipated savings.
- (iii) any loss or expense resulting from a claim by a third party; or
- (iv) any special, indirect or consequential loss or damage of any nature whatsoever caused by Killahy Group's failure to complete or delay in completing the order to deliver the Goods.

14 Indemnity

To the full extent permitted by law, the Customer will indemnify Killahy Group and keep Killahy Group indemnified from and against any liability and any loss or damage Killahy Group may sustain, because of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by the Customer or its representatives.

15 Exclusions

The price agreed herein does not include any expense covering damage arising from hidden or unknown contingencies found at the job site: example – faults or deteriorations of the building structure, pre-existing conditions of the site, heritage, or preservation orders, finding of hazardous substances and the like, unless specifically noted in the tender price.

16 General

- a) This Agreement shall, in all respects, be governed by, and construed and interpreted in accordance with, the Laws of New South Wales without giving effect to any conflicts of law principles of such State that might refer the governance, construction or interpretation of this Agreement to the Laws

of another jurisdiction. The parties hereto consent to the exclusive jurisdiction of the courts of New South Wales.

b) These Terms and Conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

c) Any conditions found to be void, unenforceable or illegal may, to that extent be severed from these Terms and Conditions.

d) No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by Killahy Group will be considered to imply or constitute a further waiver by Killahy Group of the same or any other term, condition, right or remedy.

e) Included herewith are the overseas Warranties of our suppliers **BELMONDO** and **SMULDERS**. To the extent that any provisions therein exceed the requirements of these Terms and Conditions Killahy Group will use its best endeavours to comply with the additional obligations imposed but any inability to comply, at Killahy Group's absolute discretion, shall not constitute a breach hereof.