



## TERMS OF TRADE

These terms and conditions are between **Spruce Group Limited** trading as **Spruce or Spruce Cleaning (NZCN 8130096)**, (**we, us or our**) and you, the person or entity stated in the Order or the Proposal (**you or your**), together the **Parties** and each a **Party**. Together, these terms and conditions and the Order or Proposal (as applicable) form the entire agreement under which we will provide the Services to you (**Terms**).

### 1. Acceptance

1.1 You have requested the Services set out in the Order or the Proposal, and you are taken to have accepted these Terms by the earlier of:

- (a) placing an Order through our website and clicking "I accept", or accepting the Proposal (including via email);
- (b) instructing us to proceed with the Services; and
- (c) making any payment of the Price (including any deposit).

### 2. Services

2.1 We agree to provide the Services to you in accordance with these Terms and all applicable laws.

2.2 We may provide the Services to you using our Personnel.

### 3. Time

3.1 We will use our commercial best endeavours to provide the Services at the dates and times set out in the Order or the Proposal. You acknowledge that any arrival times specified in the Order or the Proposal are an estimate only and we are not liable to you if we arrive at the Premises after such time.

3.2 We will have no liability (including a failure to meet any date referred to in clause 3.1, for delays caused by one or more of the following events or circumstances:

- (a) a Variation or deemed Variation;
- (b) an act, omission or breach by you or any of your Personnel;
- (c) traffic or other travel delays;
- (d) prior cleans taking longer than anticipated to complete;
- (e) inclement weather;
- (f) delays in obtaining approvals for the Services from relevant Authorities;
- (g) industrial action, except where caused by us; and/or
- (h) any other event or circumstance beyond our reasonable control (including Force Majeure Events).

### 4. Your Consumer Law Rights:

4.1 If you are acquiring the Services for personal, domestic or household use or consumption:

- (a) Certain legislation, including New Zealand Consumer Law and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Services which cannot be

excluded, restricted or modified (**Consumer Law Rights**). Nothing in these Terms excludes your Consumer Law Rights as a consumer under the NZCL.

- (b) You agree that our Liability for the Services is governed solely by the NZCL and these Terms.
- (c) Subject to your Consumer Law Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Services) are provided to you without warranties, representations and guarantees of any kind, except where expressly provided in these Terms.

4.2 If you are acquiring the Services for the purposes of trade, you agree that:

- (a) we are supplying and you are acquiring Services for the purpose of trade;
- (b) to the maximum extent permitted by law, the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to this Agreement; and
- (c) it is fair and reasonable that the Parties are bound by this clause.

### 5. Variations

5.1 All Variations must be agreed in writing between the Parties and will be priced in accordance with the Order or the Proposal, any schedule of rates provided by us, or as otherwise agreed between the Parties.

5.2 You may request a variation or change to the Services, including the timing for the provision of the Services, by providing written notice (including by email) to us, with details of the requested variation or change (**Variation Request**).

5.3 We will not be obliged to comply with a Variation Request unless the Parties agree to the Variation Request (or an amended Variation Request) in writing, including any effect on the Price (**Variation**).

5.4 If we consider that any instruction or direction from you constitutes a Variation, then we will not be obliged to comply with such instruction or direction unless and until a Variation Request has been issued in accordance with clause 5.2 and a Variation has been agreed in accordance with clause 5.3.

### 6. Your Responsibilities

6.1 You agree to provide us (and our Personnel) with any keys or access codes for the Premises to allow us to have unfettered access to the Premises (and the facilities at the Premises), free from harm or risk to health or safety:

- (a) at the times and on the dates requested by us; and/or
- (b) to enable us to comply with our obligations under this Agreement or at Law,

- and you agree to pay us the Cancellation Fee (as defined in clause 9.3) for any Services we are unable to provide as a result of your failure to comply with this clause, as a debt due and immediately payable to us.
- 6.2 We will keep any keys and access codes for the Premises safe and secure and will not provide them to any third parties. If we are unable to access the Premises for any reason, we will contact you and arrange an alternative date and time to provide the Services.
- 6.3 You are responsible for the acts or omissions, and any goods or services provided by you or your Personnel. You agree to ensure that you and your Personnel cooperate with us, are polite and respectful to our Personnel and do not interfere with the supply of the Services.
- 6.4 You agree that any information, documentation, specifications, goods or services provided, or directions provided, by you or your Personnel in relation to the Services (**Your Items**) will be:
- provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items;
  - fit for purpose, of merchantable quality and compliant with all applicable laws; and
  - sufficient to enable us to comply with our obligations under these Terms and all applicable laws,
- and we will have no liability to you for any Liability, and you waive and release us from any such Liability, arising from Your Items.
- 6.5 If, for any reason, you are not satisfied with the Services, you must notify us in writing within 24 hours of the Services having been provided and include details as to your reasons for non-satisfaction and supporting evidence. You must allow us an opportunity to return to the Premises before engaging any one else to rectify any issues. We may (in our sole and absolute discretion) agree to return to the Premises to rectify any issues identified at no cost to you, or provide you a full or partial refund of the Price paid for the Services to which your non-satisfaction relates. If you do not notify us of your non-satisfaction with the Services within 24 hours, then you are deemed to be satisfied with the Services and any further services we carry out at the Premises will incur our usual charges.
- ## 7. Price and Payment
- 7.1 You agree to pay us the Price in accordance with the Order or the Proposal and these Terms.
- 7.2 Where you have placed an Order, payment for the Services is to be made via our website using our third party payment processor, payment will be deducted from your credit or debit card 24 hours after the Services have been provided. You acknowledge and agree that we have no control over the actions of the third-party provider, and your use of the third-party payment method may be subject to additional terms and conditions. We do not store any credit card details, and all payment information is collected and stored through our third-party payment processor. It is your responsibility to check the Order details, including selected Services and pricing, before you submit your Order.
- 7.3 You acknowledge and agree that our third-party payment processor may store your credit card details and payment information, and that this payment information may be used to automatically charge you for reoccurring or future Orders.
- 7.4 Where you have been provided with a Proposal by us, we will invoice you as set out in the Proposal. You must pay the Price in accordance with the terms of our invoice.
- 7.5 The Price and any other amounts payable to us are stated in New Zealand dollars and are exclusive of GST (unless otherwise stated).
- 7.6 If you fail to make payment of the Price or any amount payable under these Terms, we may:
- after a period of 5 business days, cease providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so, (including legal fees, debt collector fees and mercantile agent fees);
  - require payment of the Price for future Services in full upfront;
  - cancel these Terms in accordance with clause 9; and/or
  - commence proceedings against you and recover from you, our additional costs (including legal costs) in doing so.
- 7.7 You agree that we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise).
- ## 8. Warranties and Representations
- 8.1 Each Party represents, warrants and agrees that:
- it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under these Terms, and to carry on its business;
  - that these Terms constitute a legal, valid and binding agreement, enforceable in accordance with their terms;
  - if applicable, it is registered for GST purposes.
- 8.2 You represent, warrant and agree that:
- you have effected and will maintain appropriate insurance policies for the Premises for the duration of our provision of the Services under these Terms;
  - you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;
  - you will cooperate with us, and promptly provide us with all documentation, information, instructions, facilities and access (including access to the Premises) as may be reasonably necessary to enable us to provide the Services in accordance with these Terms;
  - the information you provide to us is true, correct and complete;
  - you will not infringe any third party rights in working with us and receiving the Services;
  - you will ensure that the Premises is safe and free of harmful materials or substances; and
  - you are responsible for obtaining, and providing to us if necessary, any access and Approvals from third parties necessary for the Services to be provided, at your cost.
- ## 9. Termination
- 9.1 These Terms will commence on the Commencement Date, and will continue until the earlier of the date:

- (a) the Services are supplied to you in accordance with these Terms; and
- (b) these Terms are cancelled in accordance with clause 9, (Term).
- 9.2 Either Party may terminate these Terms, or where the Services are a recurring clean, cancel any upcoming cleans, at any time by giving not less than 24 hours' notice in writing to the other Party prior to the date on which the Services are to be provided.
- 9.3 If you provide less than 24 hours' notice to terminate these Terms or, where the Services are a recurring clean, cancel any upcoming clean, or you do not provide us with access to the Premises in accordance with clause 6.1, you must pay us a cancellation fee of \$60 (**Cancellation Fee**). You acknowledge and agree that such fee is a genuine pre-estimate of the loss we will suffer as a result of your last minute cancellation or termination. Any amounts paid to us by you in relation to Services that have not been provided as at the date of termination will be refunded to you, less any Cancellation Fee payable (if applicable). If you cancel an upcoming clean, we will, unless otherwise advised in writing by you, carry out the next scheduled clean after the cancelled one.
- 9.4 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**), if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 business days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party is unable to pay its debts as they fall due.
- 9.5 These Terms will terminate immediately upon written notice by us if:
- (a) you fail to pay the Price in accordance with clause 7; or
- (b) you or your Personnel are rude, abusive, disrespectful or violent towards our Personnel.
- 9.6 Upon expiry or termination of these Terms:
- (a) we will immediately cease providing the Services;
- (b) except where you terminate the Terms or cancel an upcoming clean in accordance with clause 9.2 and without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you; and
- (c) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms; and
- (d) by us pursuant to clause 9.3 or 9.4, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including legal fees, debt collector fees and mercantile agent fees); and
- (e) subject to clause 11, upon a request from us, you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or Intellectual Property owned by us that is in your possession or control.
- 9.7 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of these Terms.
- 9.8 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.
10. **Liability**
- 10.1 **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for any Consequential Loss;
- (b) our maximum aggregate liability for any Liability arising from or in connection with the Services and these Terms will be limited to us reperforming the relevant Services or, in our sole discretion, to repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Services, to which the Liability relates;
- (c) a Party's liability for any Liability under, arising from, or in connection with, these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (including a failure to take reasonable steps to mitigate the relevant Liability); and
- (d) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by any loss or damage which is the inevitable and unavoidable part of performing the Services.
- 10.2 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) your or your Personnel's acts or omissions;
- (b) any use or application of the Services by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
- (c) any works, services, goods, materials or items which do not form part of the Services (as expressed in this Agreement), or which have not been provided by us;
- (d) the Services being unavailable, or any delay in us providing the Goods and Services to you, for whatever reason; and/or
- (e) any event outside of our reasonable control.
11. **Intellectual Property**
- 11.1 As between the Parties:
- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in these Terms constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.
- 11.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials or Improvements will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials and/or Improvements do not automatically vest in us, you agree to do all things necessary or desirable to assure our title in such rights.
- 11.3 We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you, the New Materials and

- Improvements, solely for the purposes for which they were developed and for your use and enjoyment of the Services, as contemplated by these Terms.
- 11.4 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use Your Materials that you provide to us solely for the purposes for which they were developed and solely for the performance of our obligations under these Terms.
- 11.5 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.
- 11.6 This clause 11 will survive the termination or expiry of these Terms.
12. **Confidentiality**
- 12.1 Subject to clause 12.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, all of the other Party's Confidential Information.
- 12.2 Clause 12.1 does not apply to Confidential Information that:
- is required to be disclosed in order for a Party to comply with their obligations under these Terms;
  - is authorised to be disclosed by the disclosing Party;
  - is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms; or
  - must be disclosed by law or by a regulatory authority, including under subpoena.
13. **General**
- 13.1 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New Zealand to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 13.2 **Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. To the maximum extent permitted by law, you release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 13.3 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a party's obligation to pay any amount that is due and payable to the other Party under these Terms.
- 13.4 **Governing law:** These Terms are governed by the laws of New Zealand. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New Zealand and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 13.5 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.
- 13.6 **Joint and Severe Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.
- 13.7 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 13.8 **Online execution:** These Terms may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
- 13.9 **Publicity:** You agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material.
- 13.10 **Privacy:** We agree to comply with the legal requirements of the Privacy Principles as set out in the Privacy Act 2020 and any other applicable legislation or privacy guidelines.
- 13.11 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 13.12 **Severance:** If any provision (or part of it) under these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.
- 13.13 **Survival:** Each clause, which by its nature survives termination, will survive the termination or expiry of these Terms.
14. **Interpretation & Definitions**
- 14.1 In these Terms, unless the context otherwise requires:
- a reference to these Terms or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
  - a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
  - a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
  - no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
  - a reference to a party (including a Party) to a document includes that party's executors, administrators,

successors, permitted assigns and persons substituted by novation from time to time;

- (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (g) words like including and for example are not words of limitation;
- (h) a reference to time is to local time in New Zealand; and
- (i) a reference to \$ or dollars refers to the currency of New Zealand from time to time.

14.2 In these Terms, unless the context otherwise requires:

**Approval** means any approval, consent, licence, permit, permission, application, registration or equivalent required to be obtained in connection with the Services by any Authority or any law.

**Authority** means any national or local government departments, bodies, instrumentalities or other public authorities the approval of which is applicable to or necessary for the provision of the Services.

**Confidential Information** includes information which:

- (a) is disclosed to a receiving Party in connection with these Terms at any time;
- (b) is prepared or produced under or in connection with these Terms at any time;
- (c) relates to a disclosing Party business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the information is received.

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss" for the purposes of this definition.

**Expenses** means any disbursements, including parking, travel and accommodation costs and third party costs, reasonably and directly incurred by us for the purpose of the provision of the Services.

**Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Improvements** means any development, modification, adaptation or improvement of Our Materials or any New Materials made by or on behalf of either Party (or any of their

respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

**Intellectual Property** means any copyright, registered or unregistered designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Intellectual Property Breach** means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in these Terms (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party to these Terms or otherwise.

**Moral Rights** has the meaning given in the Copyright Act 1994.

**New Materials** means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your Personnel or our Personnel in connection with these Terms or the provision of the Services, whether before or after the date of these Terms, but excludes Our Materials and Your Materials.

**NZCL or New Zealand Consumer Law** means the consumer laws applicable in New Zealand, including but not limited to, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, as amended, supplemented or replaced, from time to time.

**Order** means the order for Services you have placed through our website.

**Our Materials** means all work, models, processes, technologies, strategies, materials, information, documentation, Specifications and services that we may provide to you under these Terms, and which may contain material which is owned by or licensed to us, and is protected by New Zealand and international laws.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Premises** means the place at which the Services are to be provided.

**Price** means the price set out in the Order or the Proposal for the provision of the Services, as adjusted in accordance with these Terms, and includes all Expenses and any deposit (if applicable).

**Proposal** means the proposal or quote that we have provided to you for the Services to which these Terms are attached or incorporated by reference.

**Services** means the cleaning services to be provided by us to you under these Terms, as expressly set out in the Order or the Proposal, as adjusted in accordance with these Terms.

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of these Terms.