

Terms of Use and Notices

Kiama Landscapes Website Terms of Use and Notices

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AGREEMENT BETWEEN YOU AND Kiama Landscapes Pty Ltd (ABN 46 099 811 882/) TRADING AS *Kiama Landscapes* (ABN 46 099 811 882) 9 Rose St Highett VICTORIA 3190 AUSTRALIA

This Terms of Use and Notices apply to the *Kiama Landscapes* Web Site and does not apply to the content of third parties.

The *Kiama Landscapes* Web Site is offered to you conditioned on your acceptance without modification of the terms, conditions, and notices contained herein. Your access to and use of the *Kiama Landscapes* Web Site constitutes your agreement to all such terms, the *kiamalandscape.com.au* Privacy Statement, the *kiamalandscape.com.au* Copyright and Trade Mark Notice and any other terms contained on this web site ("Terms of Use"), whether or not you become a member of *kiamalandscape.com.au*.

Additional terms may be contained within the *Kiama Landscapes* web site. (For example, promotions).

In the event that any of the terms, conditions, and notices contained herein conflict with the Additional terms or other terms and guidelines contained within any particular *Kiama Landscapes* Web Site, then these terms shall control.

1 What you must do

1.1 You must use *kiamalandscape.com.au* in a responsible manner.

1.2 If you are ordering on line, register to become a member.

1.3 Submit completed account application form to purchase on credit

2. What you must not do

2.1 You must not:

(a) Use *kiamalandscape.com.au* for any activities or post or transmit to or via *kiamalandscape.com.au* any information or materials which breach any laws or regulations, infringe a third party's rights, or are contrary to any relevant standards or codes;

(b) Use *kiamalandscape.com.au* in a way or post to or transmit to or via *kiamalandscape.com.au* any material which interferes with other users or defames, harasses, threatens, menaces, offends or restricts any person or which inhibits any other user from using or enjoying *kiamalandscape.com.au*;

(c) Make any fraudulent or speculative enquiries, bookings, reservations or requests using *kiamalandscape.com.au*;

(d) Use another's name, username or password;

(e) Post, or transmit via *kiamalandscape.com.au*, any obscene, indecent, inflammatory or pornographic material or material that could give rise to civil or criminal proceedings;

(f) Tamper with, hinder the operation of or make unauthorised modifications to *kiamalandscape.com.au*;

(g) Knowingly transmit any virus or other disabling feature to *kiamalandscape.com.au*; And

(h) Attempt any of the above acts or permits another person to do any of the above acts.

3. Prices and products and services are subject to change

3.1 All products and services offered to be supplied and prices displayed on *kiamalandscape.com.au* are subject to change without notice.

3.2 *Kiama Landscapes* reserves the right to make any changes to the information contained in and the layout of this Web Site, including changes to its product range, ordering mechanisms and ordering terms.

3.3 For each order, you will be charged the applicable price listed on the website for the relevant goods on the day the order is submitted.

3.4 Payment for products ordered through *kiamalandscape.com.au* may be made by credit card, direct deposit to bank account, cheque, money order or *Kiama Landscapes* account.

3.5 Prices displayed are in Australian Dollars.

3.6 Prices displayed include GST.

4. Delivery

4.1 *Kiama Landscapes* will confirm your order, but delivery of each item is still subject to its availability on the day your order is sourced and packed. If goods are not available on the delivery day, they will not be delivered as part of your order. *Kiama Landscapes* will contact you to let you know of the product's unavailability, and you will not be charged for this product.

4.2 Subject to their availability, *Kiama Landscapes* will dispatch the consumable goods you order to the address you specify in your order the within three business days or on the date specified by *Kiama Landscapes* at the time of order.



4.3 All deliveries for hardware (storage) items are negotiated prior to dispatch. *Kiama Landscapes* will contact you to confirm convenient delivery date and time.

4.4 A person must be at your delivery address to accept the goods on delivery. If there is no one at the delivery address or no one of appropriate age to receive your order when it is delivered, *Kiama Landscapes* will contact you to arrange another delivery day and time. *Kiama Landscapes* reserves the right to charge a delivery fee for failed delivery attempts.

4.5 Once the goods are delivered to you, it is your responsibility if they are lost or damaged.

4.6 Delivery charges, if any, are advised prior to the dispatch of your order. Upon your confirmation to accept the charges your order will be dispatched.

4.7 Backordered consumable items do not incur additional delivery charges.

5. Returns & Refunds

5.1 When a product you purchased from *Kiama Landscapes* is found to be defective or faulty, *Kiama Landscapes* will gladly exchange the product or provide a full refund.

5.2 If you change your mind about a consumable product or you're not happy with a consumable product you purchased from *Kiama Landscapes* for any reason, *Kiama Landscapes* will happily exchange it or refund your money provided the product is in its original packaging, *Kiama Landscapes* has a record of your purchase or you can provide proof of purchase. Unfortunately, refunds or exchanges are not available on software unless the software is unopened or faulty.

5.3 No refund or exchange is possible on customised consumable product.

5.4 No refund or exchange is possible on customised storage units (hardware).

5.5 You should call *Kiama Landscapes* on 03 9587 3733 to arrange an exchange or refund.

6. Cancellations

6.1 Orders may be cancelled by calling *Kiama Landscapes* on 0413 948 382. However, orders cannot be cancelled once the order is in transit to the customer's premises. In these circumstances, customers must accept that *Kiama Landscapes* has the right to charge a restocking fee.

6.2 Orders for customised products may be cancelled by calling *Kiama Landscapes* on 0413 948 382.

However, *Kiama Landscapes* reserves the right to charge for costs incurred to date of cancellation for customised products.

7. Security

7.1 For security reasons we may require you to re authenticate yourself from time to time, for example, after a period of inactivity on the connection between your browser and the kiamalandscapes.com.au servers. We are not responsible for any information you may lose if the kiamalandscapes.com.au servers terminate your browser session due to prolonged periods of inactivity between your browser and the kiamalandscapes.com.au servers.

7.2 We have implemented procedures and installed equipment to safeguard the security and confidentiality of your information. We continually review these arrangements to ensure we are doing all that is reasonably and technically feasible at the time to protect your information, although because of the nature of the Internet, we cannot guarantee that it is totally protected from hackers or misuse.

8. Personal and Noncommercial use limitation

8.1 The *Kiama Landscapes* online ordering system is offered predominately to the commercial sector. Personal or noncommercial ordering is available on the condition that payment is received prior to the despatch of goods or upon receipt of goods. Under no circumstances will credit terms be extended to personal or noncommercial purchases.

9. Use of your information and material

9.1 When you send us any feedback, suggestions, ideas or other materials in relation to or via kiamalandscapes.com.au, you agree that *Kiama Landscapes Pty Ltd* trading as *Kiama Landscapes* can use, reproduce, publish, modify, adapt and transmit them to others free of charge and without restriction, subject to our obligations in our Privacy Policy Statement.

9.2 To access information we have obtained about you as an individual, you may request access to this information, and if we are reasonably able to do so, provide you this access. Send access requests to accounts@kiamalandscapes.com.au.

9.3 If you believe the information *Kiama Landscapes* has about you as an individual and/or business entity is inaccurate or outdated or is misleading because it is incomplete and you wish to change this information, please send your request to accounts@kiamalandscapes.com.au. We will then amend the information as you request, or give you reasons why not.

10. Goods and Services Tax

10.1 If GST is imposed on any supply made by us through kiamalandscapes.com.au, you must pay to us, in addition to any consideration payable or to be provided by you for this supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply



payable or to be provided (without any deduction or set off) by you under any other clause in these Terms of Use. Any amount payable by you is payable on demand by us, whether such demand is made by an invoice or otherwise.

10.2 Members to kiamalandscape.com.au must notify Kiama Landscapes Pty Ltd trading as *Kiama Landscapes* in the event of a change in their GST status.

11. Termination

11.1 *Kiama Landscapes* reserves the right, in its sole discretion, to terminate your access to any or all *Kiama Landscapes* Sites/Services and the related services or any portion thereof at any time, without notice.

11.2 *Kiama Landscapes* may also terminate or suspend your access to *Kiama Landscapes* Site/Service(s) for inactivity, which is defined as failing to log into a particular service for an extended period of time, as determined by *Kiama Landscapes*. The amount of time that *Kiama Landscapes* currently considers as an "extended" period of time is 12 months relating to the particular service. Upon termination of the *Kiama Landscapes* Site/Service, your right to use the *Kiama Landscapes* Site/Service immediately ceases.

12. General Matters

12.1 This agreement is governed by the law in force in the State of Victoria, Australia, and the parties irrevocably submit to the nonexclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them for determining any dispute concerning this agreement.

12.2 If any of these Terms of Use are invalid or unenforceable, it will be struck out and the remaining terms will remain in force.

12.3 If we do not act in relation to a breach by you of these Terms of Use, this does not waive our right to act with respect to subsequent or similar breaches.

12.4 In this agreement a reference to 'we/us' means a reference to *Kiama Landscapes* and Kiama Landscapes Pty Ltd both jointly and severally.

12.5 The contents of this Web Site have been prepared for an Australian audience only.

12.6 In addition to these terms and conditions *Kiama Landscapes General conditions of sale* apply.

13. Modification of these terms of use

13.1 *Kiama Landscapes* reserves the right to change the terms, conditions, and notices under which the Site/Services are offered, including but not limited to the charges associated with the use of the *Kiama Landscapes* Site/Services. You are responsible for regularly reviewing these terms and conditions and additional terms posted on particular websites. Your continued use of the *Kiama Landscapes* Site/Services constitutes your agreement to all such terms, conditions, and notices.

14. Links to third party sites

14.1 The *Kiama Landscapes* Site/Services may contain links to third party Web Sites ("Linked Sites"). The Linked Sites are not under the control of *Kiama Landscapes* and *Kiama Landscapes* is not responsible for the contents of any Linked Site, including without limitation any link contained in a Linked Site, or any changes or updates to a Linked Site. *Kiama Landscapes* is not responsible for web casting or any other form of transmission received from any Linked Site, nor is *Kiama Landscapes* responsible if the Linked Site is not working appropriately. *Kiama Landscapes* is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by *Kiama Landscapes* of the site or any association with its operators. You are responsible for viewing and abiding by the privacy statements and terms of use posted at the Linked Sites.

14.2 Any dealings with third parties (including advertisers) included within the *Kiama Landscapes* Site/Services or participation in promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between you and the advertiser or other third party. *Kiama Landscapes* shall not be responsible or liable for any part of any such dealings or promotions.

15. No unlawful or prohibited use

15.1 As a condition of your use of the *Kiama Landscapes* Site/Services, you will not use the *Kiama Landscapes* Site/Services for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the *Kiama Landscapes* Site/Services in any manner that could damage, disable, overburden, or impair any *Kiama Landscapes* Site/Service(s) (or the network(s) connected to any *Kiama Landscapes* Site/Service(s)) or interfere with any other party's use and enjoyment of any *Kiama Landscapes* Site/Service(s). You may not attempt to gain unauthorised access to any *Kiama Landscapes* Site/Service, other accounts, computer systems or networks connected to any *Kiama Landscapes* Site/Service, through hacking, password mining or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the *Kiama Landscapes* Site/Services.



15.2 Copyright in the design, layout, graphics and other content of this Web Site belongs to Kiama Landscapes Pty Ltd (ABN 46 099 811 882/) trading as *Kiama Landscapes* Copying, modification, reproduction or distribution of the same without the prior consent of Kiama Landscapes Pty Ltd] is prohibited.

16. Disclaimer and limitation of liability

16.1 You indemnify us and our officers, employees, agents and related bodies corporate from and against all actions, claims, suits, demands, damages, liabilities, costs or expenses arising out of or in any way connected to the use of kiama.com.au by you or someone using your name and password.

16.2 To the extent permitted by law, neither we nor any of our officers, employees, agents or related bodies corporate will be liable in any way (including for negligence) for any loss, damage, costs or expenses suffered by you or claims made against you through the use of kiama.com.au, any failure to provide kiama.com.au, or in connection with any products, services or information supplied, offered to be supplied or advertised via kiama.com.au.

16.3 To the extent permitted by law, all warranties, conditions and representations about kiama.com.au, the availability of kiama.com.au for access and use, the products and services advertised, offered to be supplied or supplied via kiama.com.au and the information provided on kiama.com.au is excluded. If a term is implied by law into these Terms of Use and the law prohibits provisions in a contract excluding or modifying liability under that term, then it will be included in these Terms of Use. However, our liability for breach of such term will be limited, at our option, to one or more of the following (a) in relation to goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) The repair of such goods; (iii) The payment of the cost of replacing the goods or acquiring equivalent goods; or (iv) payment of the cost of having the goods repaired; (b) In relation to services: (i) the supply of the services again; (ii) The payment of the cost of having the services supplied again.

16.4 The information, software, products and services included in or available through the *Kiama Landscapes* site/services may include inaccuracies or typographical errors. Changes are periodically made to the *Kiama Landscapes* site/services and to the information therein. *Kiama Landscapes* and/or its respective suppliers may make improvements and/or changes in the *Kiama Landscapes* site at any time. *Kiama Landscapes* aims to include up to date product images of selected goods on the website. However, the product image may differ from the actual goods

16.5 You specifically agree that *Kiama Landscapes* shall not be responsible for unauthorised access to or alteration of your transmission or data, any material or data sent or received or not sent or received, or any transaction entered into through a *Kiama Landscapes* site.

16.6 You specifically agree that *Kiama Landscapes* is not responsible for any content sent using and/or included in a *Kiama Landscapes* site by any third party.

16.7 In no event shall *Kiama Landscapes* and/or its suppliers be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the *Kiama Landscapes* site/service, with the delay or inability to sue the *Kiama Landscapes* site/service or related services, the provision of or failure to provide services, or for any information, software, products, services and related graphics obtained through the *Kiama Landscapes* site/service, or otherwise arising out of the use of the *Kiama Landscapes* site/service, whether based on contract, tort, negligence, strict liability or otherwise, even if *Kiama Landscapes* or any of its suppliers has been advised of the possibility of damages. As some jurisdictions do not allow for the exclusion or limitation of liability of consequential or incidental damages, the above limitation may not apply to you. If you are dissatisfied with any portion of the *Kiama Landscapes* site/service, or with any of these terms of use, your sole & exclusive remedy is to discontinue using the *Kiama Landscapes* site/service.

16.8 In no event shall *Kiama Landscapes* and or its suppliers shall not be responsible for any errors or omissions contained in or on this Web Site. You rely on the information contained in this Web Site at your own risk. The information in this Web Site is supplied on condition that any person accessing or using the information will make his or her own determination as to the accuracy and usefulness of the information.

17. Storage Space and other limitations

17.1 You agree that *Kiama Landscapes* may establish limits concerning use of any *Kiama Landscapes* Service offered on a *Kiama Landscapes* Web Site, including without limitation the maximum number of days that order histories will be retained by any *Kiama Landscapes* Service, the maximum number of orders that may be sent by an account on any *Kiama Landscapes* Service, the maximum disk space that will be allotted on *Kiama Landscapes*' servers on your behalf, and the maximum number of times and duration you may access any *Kiama Landscapes* Service in a given period of time.

17.2 You agree that *Kiama Landscapes* has no responsibility or liability for the deletion, corruption or failure to store any order histories or other content maintained or transmitted by any *Kiama Landscapes* Service. You acknowledge that *Kiama Landscapes* reserves the right to log off accounts that are inactive



for an extended period of time.

17.3 *Kiama Landscapes* makes no warranty that any *Kiama Landscapes* service will be uninterrupted, timely, and secure or error free.

18. Copyright & Trademark Notices

18.1 All contents of the *Kiama Landscapes* Web Sites are: Copyright (c) 2009 *Kiama Landscapes* Pty Ltd (ABN 46 099 811 882/) trading as *Kiama Landscapes* and/or its suppliers, 9 Rose St Highett VIC 3190 Australia

18.2 the names of actual companies and products mentioned herein may be the trademarks of their respective owners.

18.3 Any rights not expressly granted herein are reserved.

18.4 You acknowledge that no action should be taken to prejudice the rights of the trademark owner or licensee of any trademarks or logos which appear on the *Kiama Landscapes* website.

19. To Unsubscribe from the Newsletter

19.1 Go to www.kiamalandscapes.com.au and sign in. Once you have successfully logged in, click on the Personal Information menu option in the Members Area. At the end of the page listing your personal information, you will be presented with an option for Newsletter subscription. To unsubscribe from the Newsletter, select the "No" option beside the Newsletter Subscription; this will unsubscribe you from the newsletter.

20. Member Account, Password, and Security

20.1 To place orders on the *Kiama Landscapes* Web Site on line you are required to open an account, you must complete the registration process by providing us with current, complete and accurate information as prompted by the applicable registration form. You then will choose a password and a user name. You are entirely responsible for maintaining the confidentiality of your password and account. Furthermore, you are entirely responsible for any and all activities that occur under your account. You agree to notify *Kiama Landscapes* immediately of any unauthorized use of your account or any other breach of security. *Kiama Landscapes* will not be liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge. However, you could be held liable for losses incurred by *Kiama Landscapes* or another party due to someone else using your account or password. You may not use anyone else's password at any time.

21. On Line Shopping

21.1 You are responsible for paying the entire amount due on your purchase, including any applicable taxes, freight and other charges assessed. With respect to freight charges, you will be advised subsequently of the exact amount of freight due on your purchase prior to the despatch of goods.

21.2 You represent and warrant that you are at least 18 years of age and that you possess the legal right to use the *Kiama Landscapes* on line ordering facility in accordance with the stated terms and usage policies.

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