

TERMS AND CONDITIONS OF USE

1. OWNERSHIP OF SITE AND TERMS OF USE

These terms and conditions of use (the **"Terms of Use"**) apply to the website located at www.kingslandscaping.com.au (the **"Site"**), registered to Jason King (the **"Owner"**) in respect of the Owner's landscaping business (**"the Business"**). The Site is the property of the Owner. By using this Site, you agree to these Terms of Use. If you do not agree, do not use this Site.

2. CONTENT OF SITE

You acknowledge and agree that, subject to clause 10, all text, graphics, user interfaces, visual interfaces, photographs, logos, sounds, music, artwork and computer code which constitute or are contained in or on the Site (collectively the **"Content"**), including but not limited to the images, design, structure, selection, coordination, expression, "look and feel" and arrangement of such Content is owned and controlled by and/or licensed to the Owner and not owned and controlled by and/or licenced to you.

3. USE OF SITE

You undertake:

- (a) except as expressly provided for in these Terms of Use, to not exploit, use, copy, reproduce, publish, communicate online, encode, translate, transmit, record, perform, broadcast or distribute the whole or any part of the Site and/or Content or adaptation thereof in any way through or to any device including, but not limited to, a computer, server, website or other medium for publication or distribution, for any purpose or enterprise, whether commercial or non-commercial, without the prior written consent of the Owner;
- (b) to not use any automatic device, program or methodology or similar or equivalent manual process to assess, acquire, copy or monitor any portion of the Site or any Content, or in any way reproduce or circumvent the navigational structure or presentation of the Site or any Content, to obtain or attempt to obtain any materials,

documents or information available through the Site;

- (c) to not use any device, software or routine to interfere or attempt to interfere with the proper working or security settings of the Site or Content or any other person's use of the Site or Content; and
- (d) to not use the Site or any Content for any purpose that is unlawful or prohibited by these Terms of Use or to solicit the performance of any illegal activity or other activity which infringes the Owner's rights or the rights of any other person.

4. THE OWNER'S OBLIGATIONS

- (a) The Owner's obligations, if any, with regard to the services of the Business (the **"Services"**) are governed solely by agreements pursuant to which they are provided, and nothing on the Site should be construed to alter these agreements.
- (b) The Owner may change any of the Services offered on the Site or the applicable prices for any such Services at any time, without notice.
- (c) The Content may be out of date, and the Owner makes no commitment to update the Content on the Site.

5. INTELLECTUAL PROPERTY

You acknowledge and agree that the Owner is the owner of intellectual property in the Content and/or in or on the Site including but not limited to trade marks, patents, designs, copyright, moral rights know-how, confidential information, whether registered or unregistered (**"Intellectual Property"**).

6. COPYRIGHT

- (a) You agree and acknowledge that all copyright in the Content and in the Site is owned by the Owner.
- (b) The Owner grants you a worldwide non-exclusive royalty free licence to:
 - (i) view the Site and the Content on the Site on a computer or other electronic device via the web browser;

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(ii) copy and store this Site and the Content in your web browser cache memory; and

(iii) print the Content for your own personal and non-commercial use.

7. TRADE MARKS

(a) You agree and acknowledge the Owner is the owner of various trade marks (the “**Trade Marks**”) including the word and composite mark “King’s Landscaping”.

(b) You acknowledge the validity of the value of the Trade Marks and undertake not to directly or indirectly take any action, or assist any person to take any action which will or is likely to:

(i) invalidate or put in dispute the Owner’s ownership of the Trade Marks;

(ii) dilute the value of the Trade Marks;

(iii) cause confusion among consumers in respect of the origin of the Services;

(iv) taint the goodwill and reputation of the Business; and

(v) cause the Business to suffer loss or damage.

(c) You undertake not to do any of the following actions, or to authorise or assist any person to take any of the following actions:

(vi) apply for the registration of a trade mark, company name, business name, domain name or any other registration which contains a substantially identical or deceptively similar mark to the Trade Marks;

(vii) oppose the application for registration or invalidate any registration of any trade marks in the name of the Owner;

(viii) if the Trade Marks are or become registered in an Australian and/or

international register, apply for and/or support an application for the removal of the Trade Marks from those registers;

(ix) register, attempt to register or use any Intellectual Property which is substantially identical or deceptively similar to the Trade Marks.

8. LICENCE FEES

(a) You acknowledge the Owner charges a licence fee for the exploitation of any Content by a person other than the Owner, his agents, employees and assignees.

(b) You agree that if you copy, reproduce or otherwise exploit an image or photograph which forms part of the Content on the Site, you will be liable to pay a licence fee to the Owner of **AUD\$10,000.00** per image or photograph.

9. ENFORCEMENT

(a) The Owner takes the protection of his Intellectual Property and all his rights attached thereto (“**Intellectual Property Rights**”) very seriously.

(b) The Owner may take action against you in the event you breach the Terms of Use, including but not limited to issuing legal proceedings for the recovery of unpaid licence fees, compensation of loss to the Business, an account of profits, and an injunction to stop you engaging in the unlawful conduct. You may also be ordered to pay the Owner’s legal costs.

(c) If you become aware of any conduct that infringes or is likely to infringe the Owner’s Intellectual Property Rights, please report this by email to jason@kingslandscaping.com.au or by post to 28 Wattle Park Avenue, Moolap VIC 3221.

10. LINKS TO OTHER SITES

You acknowledge that this Site may contain links to other independent third-party websites (the “**Linked Sites**”). These Linked Sites are provided solely as

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a convenience to users. The Linked Sites are not under the Owner's control, and the Owner is not responsible for, and does not endorse the content of these Linked Sites. You will need to make your own independent judgement regarding your interaction with these Linked Sites.

11. DISCLAIMERS

You acknowledge:

- (a) that the Owner does not promise that the Site or any Content will be error-free or uninterrupted, or that any defects will be corrected, or that your use of the Site will provide specific results;
- (b) the Site and its Content are delivered on an "as is" and "as available" basis. All Content is subject to change without notice;
- (c) the Owner cannot ensure that any file or other data from the Site will be free of viruses or contamination or destructive features;
- (d) to the maximum extent permitted by law, the Owner excludes all representations, warranties and conditions relating to this Site and Content and the use of this Site and Content including, without limitation, any warranties implied by law of a satisfactory quality, fitness for purpose and for the use of reasonable care and skill;
- (e) the Owner, his agents and employees do not have any liability in respect of the authenticity, origin, validity, completeness, reasonableness or accuracy of, or for any errors in, or omissions from, the Site or its Content;
- (f) the Content should not be construed as a recommendation to participate in any transaction or engage in any conduct. You should conduct your own independent judgement in relation to such matters and not rely on the Content;
- (g) the Owner will not be liable to you in respect of any loss or corruption of any data, database or software;

- (h) the Owner does not authorise, mandate or permit the users of the Site to engage in unlawful conduct in respect of the Site and its Content and disclaims any liability in respect of any unlawful conduct engaged in by the users of its Site and Content;

- (d) if you become aware of any Content that you believe is offensive, illegal or infringes your or any other person's Intellectual Property Rights, you will report this immediately by email to jason@kingslandscaping.com.au or by post to 28 Wattle Park Avenue, Moolap VIC 3221.

12. UNDERTAKING AND INDEMNITY IN RESPECT TO LEGAL ACTIONS

- (a) You agree not to take any legal action, including but not limited to, breach of contract, defamation and negligence, against the Owner, his agents or employees, in respect of any matter relating to the Site or the Content.
- (b) If you take legal action against the Owner, his agents or employees, whether such action is brought under general law, statute or in equity, you agree to indemnify the Owner, his agents and employees:
 - (i) from and against all actions, claims, demands, losses, damages, proceedings, compensation, costs, charges and expenses (including solicitor fees) incurred by or made against them; and
 - (ii) for any loss they suffer and the Business suffers as a result of you taking legal action against them, including but not limited to losses which are direct or indirect, economic or non-economic..

13. INDEMNITY

You agree to indemnify and hold the Owner, his agents and employees harmless from and against any, actions, claims, demands, losses, damages, proceedings, compensation, costs, charges and expenses (including solicitor fees) incurred by or made against them

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(including by a third party) due to or arising out of or in connection with your use of the Site or Content.

14. VARIATION

- (a) The Owner reserves the right to vary these Terms of Use at any time and without notice. Your continued use of the Site following the publication of changes will mean that you accept and agree to the changes.
- (b) The revised Terms of Use will apply to the use of this Site from the date of publication of the revised Terms of Use on the Site. Please check this page regularly to ensure you are familiar with the current version.

15. ENTIRE AGREEMENT

The Terms of Use constitute the entire agreement between the Owner and you in relation to your use of the Site and they supersede all previous agreements in respect of your use of the Site.

16. SEVERABILITY

Any clause in these Terms of Use which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Terms of Use or affecting the validity or enforceability of that clause in any other jurisdiction.

17. LAW AND JURISDICTION

These Terms of Use will be governed by and construed in accordance with the laws in force in the State of Victoria and any disputes relating to these Terms of Use will be subject to the non-exclusive jurisdiction of the courts of that state and the Commonwealth of Australia.

18. FEEDBACK AND INFORMATION

You acknowledge that any feedback you provide at the Site is deemed to be non-confidential. The Owner, his agents and employees are free to use this information on an unrestricted basis.