

Quotation Standard Terms and Conditions

1. DEFINITIONS

- 1.1 In these Terms and Conditions unless the context otherwise requires:
- 'Business Day'** means any day which is not a Saturday, Sunday, or a bank or public holiday in Western Australia.
- 'Claim'** means any action, suit, proceeding or demand of any kind.
- 'Client'** means the person, company or body corporate to whom the Quotation is addressed.
- 'Company'** means the company named in the Quotation;
- 'Consequential Loss'** means: any loss of profit, revenue, business, contracts or anticipated savings, loss of expectation, loss of recourse to finance, loss of or inability to use equipment, loss of data, down time costs, loss of goodwill, wasted overheads or punitive or exemplary damages; any special, indirect or consequential loss or damage of any nature whatsoever; or loss not arising naturally according to the usual course of things.
- 'Contract'** means these Terms and Conditions and the Quotation.
- 'Contract Price'** means the price submitted by the Company as detailed in the Quotation.
- 'Insolvency Event'** means in relation to a Party: the bankruptcy, winding up or insolvency of that Party; or that Party enters into any scheme of arrangement or composition; or a receiver or administrator is appointed to any property of that Party.
- 'Liabilities'** means damages, Claim(s), losses, liabilities, costs, fees and expenses of any kind (including legal costs on a full recovery basis).
- 'Party'** means the Company or the Client and Parties is a reference to both.
- 'Quotation'** means the quotation sheet together with any attachments to which these Standard Terms and Conditions are attached.
- 'Site'** means the land and other places to be made available to the Company by the Client on which the Works are to be performed.
- 'Special Conditions'** means provisions of the Quotation which are inconsistent with any term or condition of these Terms and Conditions.
- 'Terms and Conditions'** means this document titled "Quotation Standard Terms and Conditions".
- 'Works'** means the works described in the Quotation that the Company has agreed to perform under this Contract.

2. INTERPRETATION

- 2.1 In this Contract unless the context otherwise applies the following rules of interpretation apply:
- headings in this Contract shall not be used in the interpretation of this Contract;
 - an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority;
 - a reference to the word "including" and similar expressions are not words of limitation;
 - a reference to a document includes all amendments, supplements to, replacements, or novations of that document;
 - a reference to a Party to a document includes that Party's executive, administrators, successors and permitted assigns;
 - if a party consists of more than one person this Contract binds them jointly and each of them severally;
 - any Special Conditions forming part of this Contract will take precedence over these Terms and Conditions and these Terms and Conditions will take precedence over all annexures, schedules or appendices to this Contract; references to parties, clauses, schedules or annexures are references to parties, clauses, schedules or annexures to, or of, this Contract and a reference to this Contract includes any schedule or annexure;
 - a reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Contract; and
 - no rule of construction applies to the disadvantage of a party merely because that Party was responsible for the preparation of this Contract or any part of it.

3. CONTRACT DOCUMENTS

- 3.1 This Contract comprises these Standard Terms and Condition and the Quotation.
- 3.2 If there is any conflict or inconsistency between the documents comprising this Contract then the Quotation will take precedence over these Standard Terms and Conditions.
- 3.3 No amendment or variation of this Contract will be valid or binding on a Party unless the amendment or variation is made in writing and signed by all the Parties.
- 3.4 If the Client enters into this Contract as trustee, the Client warrants that it has full authority and power to enter into this Contract and bind the trust and the obligations in this Contract will be binding on the trust.
- 3.5 This Quotation will remain valid for thirty (30) days and will automatically expire and is not capable of acceptance after this date. On expiry of this validity period, if the Client requests the Company to re-quote or undertake the Works, the Company may either confirm the Quotation, amend the Quotation or advise that it will not be undertaking the Works. The Client must agree to the Company's advice on the Quotation prior to Works commencing and upon the Client's agreement, a binding contract will be formed constituting the amended or unamended, as the case may be, Quotation and these Terms and Conditions.

4. PERFORMANCE OF WORKS

- 4.1 The Company will perform the Works in accordance with this Contract and in consideration of the payment of the Contract Price by the Client.
- 4.2 The Client must provide a written notice to the Company at least one week prior to the anticipated commencement date of the Works to assist in the Company's programming. The Client acknowledges that the Company cannot guarantee that the Works will commence on any planned or agreed date or the commencement date stated in the Quotation but that the Company will endeavour to proceed on the first available opportunity thereafter. The Client acknowledges that the Company does not guarantee completion of the Works by any planned or agreed date or the completion date stated in the Quotation but that the Company will endeavour to complete the Works as soon as possible.
- 4.3 The Client may at any time prior to the completion of the Works and on reasonable notice, direct the Company to perform additional work provided that the additional work is within the general scope of the Works set out in this Contract. The Company will not be obligated to undertake such additional Works, until the parties have agreed in writing on the cost of the additional Works to be performed.
- 4.4 Neither the Company nor the Client shall be held liable for any breach of this Contract where the breach arises from an act of God, war, natural disaster, terrorism or any other event beyond the reasonable control of either party.

5. ACCESS TO SITE

- 5.1 The Client must provide to the Company access to the Site and possession of the Site necessary to enable the Company to properly perform the Works without interference.
- 5.2 The Client must obtain all necessary permits and approvals for the Works to be undertaken at the Site.

- 5.3 The Client must locate and advise the Company of all services (underground and aboveground) prior to commencement of the Works. If services which were not located or advised by the Client are damaged by the Company, the Client will release and indemnify (and will keep indemnified) the Company (and its officers, employees and contractors) from and against any resulting Liability.
- 5.4 The Client shall be liable for any damage to the Company's machinery or equipment caused by the presence of material, or any other items which were not reasonably anticipated by the Company and not previously advised by the Client.
- 5.5 The Company will ensure that its employees, representatives and agents act in a safe and lawful manner and that they comply with all relevant safety legislation, its own safety procedures and with any safety standards and policies provided by the Client to the Company when the Company's employees, representatives and agents are at Site.
- 5.6 The Client must protect the Works (and any other work which is required to be performed on the Site in order to enable the Works to be undertaken) and the Company's plant and equipment when it is not being operated by the Company.

6. DELAYS

- 6.1 The Client shall reimburse the Company for all committed resources at the rates contained in the Quotation plus an overhead cost of 15% or, if there are no applicable rates, all reasonable costs plus an overhead cost of 15%, incurred by the Company for all delays, except to the extent that the delays were solely caused by the Company.

7. INVOICING AND PAYMENT

- 7.1 The Contract Price and/or each rate constituting the Contract Price is fixed, and is exclusive of GST.
- 7.2 If actual quantities vary by greater than 20% to those supplied by the Client for pricing, the Company reserves its right to review the Quotation.
- 7.3 The Company will, at the earlier of on a monthly basis and when the Work are complete, submit to the Client an invoice which identifies the amount owing for all Works performed in the relevant month by the Company under this Contract.
- 7.4 The Client must assess each invoice within fourteen (14) days of receipt. If the invoice is not assessed within this time, the invoice is deemed to be agreed in full.
- 7.5 The Client is not entitled to deduct any invoiced amount from any amounts owing to the Client by the Company.
- 7.6 Except as otherwise agreed by the Company in writing, the Client shall pay all invoiced amounts in Australian Dollars, without right of set off, within fourteen (14) days from the date of invoice.
- 7.7 If the Client has not made a payment by the due date, the Company may immediately and without notice suspend the performance of all or part of the Works and wholly or partially demobilise from Site. The Client will be liable to pay the Company interest on the sum outstanding at the rate of 10% per annum, accruing daily.
- 7.8 In the event the Client defaults in payment of an invoice, the Client shall indemnify the Company from any costs incurred by the Company in recovering the outstanding amount, including but not limited to solicitors fees.
- 7.9 If the Company suspends performance of the Works, the Client shall reimburse the Company for all committed resources at the rates contained in the "Quotation" or, if there are no applicable rates, all reasonable costs plus an overhead cost of 15%, for the duration of the suspension. The suspension is taken to commence on the day that the Company actually suspends all or part of the Works and finishes on the day all (not just part) of the Works are recommenced or on the day this Contract is terminated. If the Company wholly or partially demobilises from Site pursuant to this clause, the Client will pay the Company demobilisation costs at the rates stated in the Quotation or, if not stated in the Quotation, the reasonable costs of demobilising the Company's plant, equipment and personnel plus an overhead cost of 15%. If the Company re-mobilises following the lifting of the suspension, the Client will pay will pay the Company the mobilisation costs at the rates stated in the Hire Details or, if not stated in the Hire Details, the reasonable costs of mobilising the Company's plant, equipment and personnel plus an overhead cost of 15%.

8. INSURANCE

- 8.1 The Client will maintain contract works insurance covering damage to the Works for their re-instatement value in the joint names of the Client, the Company and any of the Company's sub-contractors with an applicable excess of not more than \$10,000. If the Works are damaged (whether by any act or omission of the Company, whether negligent or not or in breach of this Contract or not, or for by any other cause), the Client will release and indemnify (and will keep indemnified) the Company (and its officers, employees and contractors) from and against any resulting Liabilities, whether arising from rectification work or otherwise.
- 8.2 Both the Company and the Client will maintain public liability insurance up to a limit of \$10,000,000 to cover their own liability for any personal injury or property damages caused or contributed to.

9. LIABILITY

- 9.1 Notwithstanding any provision to the contrary and to the full extent permitted by law, the Company will not be liable to the Client (including in respect of any indemnity), on any basis (including negligence, tort, contract, statute or otherwise), for any Consequential Loss suffered or incurred by the Client, or suffered or incurred by a third party for which the Client is liable, directly or indirectly arising out of or in connection with the performance or non-performance of the Works or this Contract, and the Company is released from any liability to the Client in respect of such Consequential Loss. Notwithstanding any provision to the contrary and to the full extent permitted by law, the Client will indemnify (and will keep indemnified) the Company (and its officers, employees and contractors) from and against any Liabilities claimed or made on any basis (including negligence, tort, contract, statute or otherwise) by third parties for Consequential Loss against the Company (and its officers, employees and contractors) directly or indirectly arising out of or in connection with the performance or non-performance of the Works or this Contract.
- 9.2 Notwithstanding any provision to the contrary and to the full extent permitted by law, the Company's maximum aggregate liability to the Client for all Liabilities arising under or in respect of this Contract is limited to and will not exceed 50% of the aggregate of the Contract Price.
- 9.3 To the full extent permitted at Law, if any part of the Site, any structure, roadway, pathway or any other item, thing or property that does not constitute a part of the Works is lost or damaged, the Client will release and indemnify (and will keep indemnified) the Company (and its officers, employees and contractors) from and against any resulting Liabilities unless the loss or damage was caused solely by the negligent action of the Company.
- 9.4 The Client indemnifies the Company and its officers, employees, agents and contractors against any Liabilities which the Company suffers or incurs in respect of any breach by the Client of this Contract.
- 9.5 The Client indemnifies the Company against any Liability which the Company suffers or incurs in respect of any damage or loss to the Company's plant and equipment when the plant and equipment is on Site but is not, at the time of the loss or damage, being operated by the Company's personnel.
- 9.6 Nothing in this Contract excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains protections for the purchasers of goods and services. Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in

Quotation Standard Terms and Conditions

- relation to this Contract and the Company is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ("Non-Excludable Term"), and the Company is able to limit the Client's remedy for a breach of the Non-Excludable Term, then the Company's liability for breach of the Non-Excludable Term is limited to (at the Company's election):
- a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 9.7 It is agreed that to the extent permitted by law the operation of Part 1F of the Civil Liability Act 2002 WA (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations and liabilities of either party under this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- 9.8 If any of the provisions of Part 1F of the Civil Liability Act 2002 (WA) (and any equivalent statutory provision in any other state or territory) relating to proportionate liability apply to any claim between the Client and the Company whether in contract, tort or otherwise, the Client will indemnify the Company against:
- a) any liability to or claim by any other person; and
 - b) any cost, loss, expense or damage incurred by the Principal, for which the Client would be liable but for the operation of Part 1F of the Civil Liability Act 2002 WA (and any equivalent statutory provision in any other state or territory).
- 10. DEFAULT AND TERMINATION**
- 10.1 Subject to other clauses of this Contract, if the Company is of the opinion that Client has breached any of its obligations under this Contract and the breach is, in the opinion of the Company, capable of remedy, the Company may give to the Client a written notice of default which will stipulate a period of time within which the Client must remedy the breach. The Company may suspend the Works immediately after giving the written notice of default and is entitled to claim, and be paid, reasonable damages resulting from the suspension and the possible breach of this Contract by the Client. The Company may immediately terminate this Contract by written notice of termination to the Client if the Client does not comply with written notice of default within the time prescribed in the notice of default or if the breach of this Contract by the Client is, in the opinion of the Company, not capable of remedy. If this Contract is terminated in accordance with this clause by the Company, the Client must pay to the Company for all Works performed as at the date of termination, plus any costs that the Company has incurred up to the date of termination, plus all costs of demobilising the Company's plant, equipment and personnel, plus any Liabilities the Company has to its suppliers or contractors which it cannot unwind, plus 15% of the value of any unperformed Works as at the date of termination.
- 10.2 If the Company commits a breach of this Contract, the Client may give the Company a written notice of default stating the Company's breach and giving the Company not less than 14 days to remedy the breach or advise why the Company does not consider that it has breached this Contract. If the Company has committed a breach of this Contract and the Company fails to remedy the breach within the time set out in the Client's written notice, the Client may terminate this Contract by written notice of termination effective immediately. If this Contract is terminated by in accordance with this clause by the Client, the Client must pay to the Company, without right of set-off or making any deduction, for all Works performed as at the date of termination, plus any costs that the Company has incurred up to the date of termination, plus all costs of demobilising the Company's plant, equipment and personnel, plus any Liabilities the Company has to its suppliers or contractors which it cannot unwind. If the Client has incurred Liabilities as a result of the Company's breach of this Contract, the Client will be required to prove its actual Liabilities and claim those from the Company but the Client is not permitted to claim any Liabilities of having to have the remainder of the Works performed by itself or another contractor.
- 10.3 Either Party may terminate this Contract by notice in writing to the other Party if an Insolvency Event occurs in respect of either Party.
- 10.4 The Company may terminate this Contract without cause at any time by giving 7 days written notice to the Client. If this Contract is terminated in accordance with this clause, the Client must pay to the Company for all Works performed as at the date of termination, plus any costs that the Company has incurred up to the date of termination, plus all costs of demobilising the Company's plant, equipment and personnel, plus any Liabilities the Company has to its suppliers or contractors which it cannot unwind.
- 11. WARRANTY**
- 11.1 The Company warrants that the Works will be carried out in a proper manner and to a standard reasonably expected of a contractor who performs work of a similar nature to the Work.
- 11.2 The Client warrants that:
- a) the drawings and other written document provided by the Client are accurate;
 - b) the physical conditions of the ground or material on which the Company is to carry out the Works, or traverse for the purposes of accessing the Works, are such that the Company's existing equipment is able to carry out the work without unusual wear and tear (on the equipment, its tyres and/or track or ground engaging tools) and is able to traverse the ground without damaging the ground or material and without the equipment requiring assistance to traverse the ground or material;
 - c) the ground conditions (including but not limited to ground material properties, obstructions, services and ground water) encountered by the Company will be as per the Client's advice and information received by the Company prior to the issue of the Quotation.
- 11.3 The Client acknowledges that the Company has relied on this warranty in pricing and agreeing to perform the Works. The Company will be entitled to all reasonable costs incurred during the performance of the Works as a result of or in respect of any breach or non-fulfilment of this warranty.
- 12. INTELLECTUAL PROPERTY**
- 12.1 The Company retains all intellectual or industrial property rights whether registered or unregistered, which are provided by, created or modified by the Company in performing the Works during this Contract, including without limitation:
- a) all patents, trademarks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working; and
 - b) all licences and other rights to use or to grant the use of any of the foregoing.
- 13. CONFIDENTIALITY**
- 13.1 The Client acknowledges and agree that any information submitted by the Company in its offer which includes but is not limited to pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client. Such information must at all times remain confidential and shall not be disclosed to any third party without the Company's prior written consent.
- 13.2 If such information is disclosed to a third party with the Company's prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by confidentiality obligations.
- 13.3 The Client will indemnify the Company for all Liabilities arising from or in connection with a breach of this clause by the Client.
- 14. ASBESTOS AND OTHER HAZARDOUS MATERIALS**
- 14.1 The Company's Contract Price is based on work being performed in an asbestos and hazardous free environment. The Client is responsible for all costs arising as a result of the presence of asbestos, asbestos contaminated material or any other hazardous or toxic material in or on the Site. For the purposes of this Contract, "hazardous or toxic material" is defined to include material which is not classified as "Type 1 Inert Waste" as per the WA Landfill Waste Classification & Waste Definitions 1996 (as amended) or any other equivalent document in Western Australia.
- 14.2 The Client, at its own cost, will be responsible for the removal and disposal asbestos, asbestos contaminated material or any other hazardous or toxic material in or on the Site.
- 14.3 The Company is entitled to immediately and without notice suspend work in any area on the Site where it reasonably suspects that area on the Site may contain materials which may be toxic or hazardous or if it reasonably suspects that other areas of the Site contain materials which may be toxic or hazardous and which may affect the Company's personnel. If the Company suspends performance of the Works, the Client shall reimburse the Company for all committed resources at the rates contained in the "Quotation" or, if there are no applicable rates, all reasonable costs plus an overhead cost of 15%, for the duration of the suspension. The suspension is taken to commence on the day that the Company actually suspends all or part of the Works and finishes on the day all (not just part) of the Works are recommenced or on the day this Contract is terminated.
- 15. GST**
- 15.1 The Contract Price detailed in the Quotation is net of any Goods and Services Tax (GST).
- 15.2 In this clause:
- a) GST means GST within the meaning of the GST Act and includes penalties and interest; and
 - b) GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
- 15.3 Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.
- 15.4 Except where this Contract specifies otherwise, an amount payable by a party under this Contract in respect of a taxable supply by the other party represents the value of the supply or the net amount under this clause.
- 15.5 The recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.
- 15.6 If this Contract requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party (payee) to a third party, the amount to be paid, reimbursed or compensated is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).
- 16. APPLICATION OF PPSA**
- 16.1 In this clause:
- a) "PPSA" means the Personal Properties Securities Act 2009 (Cth); and
 - b) "Security Interest" has the same meaning as in section 12 of the PPSA.
- 16.2 The Company and the Client acknowledge that the Client consents to the Company registering its security interest under the PPSA and will do all things reasonably necessary to assist the Company to register its security interest.
- 16.3 The Client waives the right to receive from the Company verification of the registration pursuant to section 157(3)(b) of the PPSA.
- 16.4 The Company and the Client agree that the following provisions of the PPSA do not apply to this Contract: section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor; section 96 (when a grantor may retain an accession); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured party may dispose collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor; section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 17. NOTICES**
- 17.1 A notice, demand, certification, process or other communication relating to this Contract must be in writing in English and may be given by an agent of the sender. In addition to any other lawful means, a communication may be given by being:
- a) personally delivered;
 - b) left at the Party's current address for notices;
 - c) sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
 - d) sent by email to the Party's current email address for notices;
 - e) sent by email to the email address specified in this Contract. Where no email address is specified then notice shall be deemed to have been effectively given if it is sent to an email address which can be demonstrated by the sending Party to be an email address in use by the receiving Party; or
 - f) sent by fax to the Party's current fax number for notices.
- 17.2 The particulars for delivery of notices are initially those of the contact details of each Party as set out in the Quotation. Each Party may change its particulars for delivery of notices by notice to the other.
- 17.3 A communication is given if posted:
- a) within Australia to an Australian address, four days after posting; or
 - b) in any other case, 14 days after posting.
- 17.4 A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.
- 17.5 If a communication is given after 5.00 pm in the place of receipt it is taken as having been given on the next day.
- 18. GENERAL**
- 18.1 This Contract is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
- 18.2 This Contract comes into existence and becomes binding on the first to occur of:
- a) the Client signing the Quotation;
 - b) the Client acknowledging in writing that it accepts the Contract Price stated in the Quotation; and
 - c) the Client requesting the Company to mobilise to Site to undertake the Works.
- 18.3 None of the terms and conditions of this Contract will be varied, waived, discharged or released either at law or equity, except with prior consent, in writing by both Parties.
- 18.4 Every provision of this Contract shall be deemed to be severable and if any provision of this Contract shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted here from and this Contract with such provision thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.
- 18.5 This Contract constitutes the entire, final and concluded agreement between the parties in respect of the Works. Subject to the other express terms of this Contract, no prior or subsequent representation or agreement (whether verbal or in writing) by the Client or the Company, or any of their respective employees or agents, will bind the Parties.

18.6 The Company is an independent contractor of the Client and this Contract does not constitute a partnership or a joint venture or employment relationship between the Parties, or authorise a Party to assume or create any obligations on behalf of another Party except as specifically permitted under this Contract.