

**1. Definitions**

- 1.1 "TSA" shall mean Trenching Systems Australia Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Trenching Systems Australia Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by TSA to the Client.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Equipment" shall mean all Equipment including any accessories supplied on hire by TSA to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by TSA to the Client.
- 1.5 "Services" shall mean all Services supplied by TSA to the Client and includes any advice or recommendations.
- 1.6 "Price" shall mean the price payable for the Services as agreed between TSA and the Client in accordance with clause 4 of this contract.

**2. The Competition and Consumer Act 2012 (Cth) ("CCA") and Fair Trading Acts ("FTA")**

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

**3. Acceptance**

- 3.1 Any instructions received by TSA from the Client for the supply of Services and/or the Client's acceptance of Services supplied by TSA shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of TSA.
- 3.4 The Client shall give TSA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by TSA as a result of the Client's failure to comply with this clause.
- 3.5 Services are supplied by TSA only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

**4. Price and Payment**

- 4.1 At TSA's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by TSA to the Client in respect of Services supplied; or
  - (b) TSA's quoted Price (subject to clause 3.3) which shall be binding upon TSA provided that the Client shall accept TSA's quotation in writing within thirty (30) days.
- 4.2 TSA reserves the right to change the Price in the event of a variation to TSA's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstance, or any variation in measurements provided for concrete thickness) will be charged for on the basis of TSA's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.4 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and TSA.
- 4.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**5. Delivery of Services**

- 5.1 At TSA's sole discretion delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated address (in the event that the Services are delivered by TSA or TSA's nominated carrier).
- 5.2 At TSA's sole discretion the costs of Delivery are included in the Price.
- 5.3 The failure of TSA to deliver shall not entitle either party to treat this contract as repudiated.
- 5.4 TSA shall not be liable for any loss or damage whatsoever due to failure by TSA to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of TSA.

**6. Risk**

- 6.1 If TSA retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.

**7. Underground Locations**

- 7.1 Prior to TSA commencing any work the Client must advise TSA of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, fuel services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, plumbing services, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst TSA will take all care to avoid damage to any underground services the Client agrees to indemnify TSA in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 7.1.

**8. Title**

- 8.1 TSA and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid TSA all amounts owing for the particular Services; and
  - (b) the Client has met all other obligations due by the Client to TSA in respect of all contracts between TSA and the Client.
- 8.2 Receipt by TSA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then TSA's ownership or rights in respect of the Services shall continue.
- 8.3 It is further agreed that:
- (a) until such time as ownership of the Services shall pass from TSA to the Client TSA may give notice in writing to the Client to return the Services or any of them to TSA. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
  - (b) if the Client fails to return the Services to TSA then TSA or TSA's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services.

**9. Errors and Omissions**

- 9.1 The Client shall inspect the Services on delivery and shall within two (2) days of delivery (time being of the essence) notify TSA of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford TSA an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which TSA has agreed in writing that the Client is entitled to reject, TSA's liability is limited to either (at TSA's discretion) replacing the Services or rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Competition and Consumer Act 2012 (Cth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services, or replacement of the Services.

**10. Default and Consequences of Default**

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TSA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by TSA.
- 10.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify TSA from and against all costs and disbursements incurred by TSA in pursuing the debt including legal costs on a solicitor and own client basis and TSA's collection agency costs.
- 10.4 Without prejudice to any other remedies TSA may have, if at any time the Client is in breach of any obligation (including those relating to payment), TSA may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. TSA will not be liable to the Client for any loss or damage the Client suffers because TSA has exercised its rights under this clause.
- 10.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 10.6 Without prejudice to TSA's other remedies at law TSA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TSA shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to TSA becomes overdue, or in TSA's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**11. Security and Charge**

- 11.1 Despite anything to the contrary contained herein or any other rights which TSA may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said

land, realty or any other asset to TSA or TSA's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that TSA (or TSA's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should TSA elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify TSA from and against all TSA's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint TSA or TSA's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

## 12. Cancellation

- 12.1 TSA may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice TSA shall repay to the Client any sums paid in respect of the Price. TSA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by TSA (including, but not limited to, any loss of profits) up to the time of cancellation.

## 13. Privacy Act 1988

- 13.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for TSA to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by TSA.
- 13.2 The Client agrees that TSA may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 13.3 The Client consents to TSA being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4 The Client agrees that personal credit information provided may be used and retained by TSA for the following purposes (and for other purposes as shall be agreed between the Client and TSA or required by law from time to time):
  - (a) the provision of Services; and/or
  - (b) the marketing of Services by TSA, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 13.5 TSA may give information about the Client to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 13.6 The information given to the credit reporting agency may include:
  - (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that TSA is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of TSA, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Client by TSA has been paid or otherwise discharged.

## 14. Building and Construction Industry Payments Act 2004 (QLD)

- 14.1 At TSA's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 (QLD) may apply.
- 14.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 (QLD), except to the extent permitted by the Act where applicable.
- 14.3 The date for making claims shall be the last day of the month (The Reference Date).

**15. Equipment Hire**

- 15.1 The Equipment shall at all times remain the property of TSA and is returnable on demand by TSA. In the event that the Equipment is not returned to TSA in the condition in which it was delivered TSA retains the right to charge the Price of repair or replacement of the Equipment.
- 15.2 The Client shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by TSA to the Client.
- 15.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, TSA's interest in the Equipment and agrees to indemnify TSA against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

**16. General**

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the State in which the sale was made and are subject to the jurisdiction of the courts of that same State.
- 16.3 TSA shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TSA of these terms and conditions.
- 16.4 In the event of any breach of this contract by TSA the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 16.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by TSA nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 TSA may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 TSA reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which TSA notifies the Client of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by TSA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect TSA's right to subsequently enforce that provision.