

TRADING TERMS AND CONDITIONS

1. PARTIES:

The Supplier: All City Sawing & Drilling (VIC) Pty Ltd (ACN 147 946 674)

The Customer: _____

2. DEFINITIONS

- 2.1. The Supplier is All City Sawing & Drilling (VIC) Pty Ltd (ACN 147 946 674) of 1/7 Downard Street, Braeside in the State of Victoria.
- 2.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 2.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
- 2.4. The Order shall be defined as any request for the provision of Services by the Customer with the Supplier which has been accepted by the Supplier.
- 2.5. The Services are the supply of concrete cutting services, including but limited to any advice and/or recommendations.
- 2.6. The Premises are the land or land and buildings where the Services are to be carried out, or which are the subject of the Services.
- 2.7. The Price is the amount invoiced for the Services provided.
- 2.8. Reference to loss and/or damage includes Indirect, Special or Consequential loss and/or damage. Indirect, Special or Consequential loss and/or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 2.9. Major failure is as defined under the *Competition and Consumer Act 2010*.

3. GENERAL

- 3.1. These Terms and Conditions together with the Supplier's Credit Application Form and the Supplier's quotation form this Agreement.
- 3.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
- 3.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 3.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 3.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 3.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 3.7. 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 and the offending provision shall be deemed as severed from these Terms and Conditions.
- 3.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 3.9. The failure by the Parties to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect each party's' right to subsequently enforce that provision.
- 3.10. The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.

4. QUOTATIONS AND PLACEMENT OF ORDERS

- 4.1. Orders placed by the Customer with the Supplier will be considered valid when placing the Order verbally and/or in writing.
- 4.2. At the discretion of the Supplier, the Customer may be required to provide the Supplier with a Purchase Order, Work Order or Job Docket before any Services are provided.
- 4.3. Any written Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation.
- 4.4. All prices are based on taxes and statutory charges current at the time of the Quotation. Should these vary during the period from the date of the Quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

5. PRICE

- 5.1. GST will be charged on the Services provided by the Supplier that attract GST at the applicable rate.
- 5.2. The Supplier reserves the right to change the Price in the event of a variation to the Order, and notice will be provided in writing by the Supplier within a reasonable time.
- 5.3. At the Supplier's sole discretion the Price shall be either:
 - 5.3.1. The Supplier's quoted Price as for the Order (subject to clause 5.2); or
 - 5.3.2. As detailed on invoices provided by the Supplier to the Customer in respect of Services supplied.
- 5.4. Minimum charges apply.
- 5.5. A surcharge fee will apply to all payments made by credit card.

6. PROVISION OF THE SERVICES

- 6.1. At any time before payment is made by the Customer, the Supplier reserves their right to:
 - 6.1.1. Decline requests for any Services requested by the Customer.
 - 6.1.2. Cancel or postpone appointments at their discretion.
- 6.2. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of this Agreement.
- 6.3. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 6.4. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Services provided.
- 6.5. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- 6.6. The Supplier may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the Quotation or Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Services includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Services at the request of the Customer.
- 6.7. The Customer grants full access to the Supplier its servants and agents to the Premises to enable it to carry out the Services.
- 6.8. The Customer is responsible to obtain all necessary permits and to mark out the site at the Premises for the provision of the Services.
- 6.9. The Customer is responsible to ensure that there are no encumbrances or caveats on the title of the Premises that could be detrimental to or affect the Supplier's ability to provide the Services. The Customer is solely responsible for obtaining the relevant independent legal advice to this effect.
- 6.10. The Customer covenants that he is either the owner of the Premises or is acting with the authority of the Owner and the Customer indemnifies and will continue to indemnify the Supplier thereto in respect of any claims for direct or indirect damages and consequential or special losses by the owner of the Premises

7. PAYMENT AND CREDIT POLICY

- 7.1. Any reference to Customer shall include all Customers, unless it refers to a specific group of Customers.
- 7.2. For credit purposes, the two main groups of Customers are Non-Account Customers and Account Customers.
- 7.3. **Non-Account Customers** must make full payment to the Supplier within fourteen (14) days from the EOM the invoice was issued, unless otherwise specified or agreed by the Supplier in writing.
- 7.4. **Account Customers** must make full payment to the Supplier within thirty (30) days from the EOM the invoice was issued.

Credit

- 7.5. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- 7.6. Any credit granted may be revised by the Supplier at any time and at its discretion.
- 7.7. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms and Conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 7.8. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

8. DISHONOUR OF CHEQUE

- 8.1. If any cheque issued by the Customer or by any third party in payment of the Price is dishonored:
 - 8.1.1. The Supplier may refuse to supply any further Services until satisfactory payment is received in full, including bank fees and charges;
 - 8.1.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
 - 8.1.3. The Customer may be liable for a dishonoured cheque fee of \$40.00.

9. DEFAULT

- 9.1. Invoices issued by the Supplier shall be due and payable within fourteen (14) days from the EOM the invoice was issued or as specified or agreed by the Supplier for **Non-Account Customers**.
- 9.2. Invoices issued by the Supplier shall be due and payable within thirty (30) days from the EOM the invoice was issued for **Account Customers**.
- 9.3. Subject always to any laws of the relevant jurisdiction, if the Supplier does not receive the outstanding balance for the Price on or before the Default Date the Customer acknowledges and agrees that:
 - 9.3.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
 - 9.3.2. The Supplier may, in its discretion, calculate interest at the rate of two per centum (2%) higher than the rate for the time being fixed from time to time under Section 2 of the *Penalty Interest Rates Act 1983 (Vic)* for all monies due by Customer to the Supplier;
 - 9.3.3. In the event of the Customer being in default of his obligation to pay, and the overdue account is then referred to a debt collection agency and/or law firm for collection, the Customer shall be liable for the recovery costs incurred, and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\text{Total Debt including Commission and GST} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission \% charged by the agency (including GST)}}$$

- 9.3.4. In the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au
- 9.3.5. In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

10. RISK AND LIABILITY

- 10.1. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.
- 10.2. The Supplier takes no responsibility if the specifications provided by the Customer are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
- 10.3. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
- 10.4. The Supplier takes no responsibility and will not be liable for any damage or costs resulting in the Services being unsuitable as a consequence of insufficient information provided by the Customer.
- 10.5. The Supplier does not represent that it will provide any Services unless it is included in the Quote.
- 10.6. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any loss incurred as a result of delay or failure to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 10.7. The Supplier will not be held responsible for any delay due to inclement weather, failure of the Customer to provide required information and/or specifications or in any circumstances beyond the Supplier's reasonable control.
- 10.8. The Supplier is not liable to provide any insurance cover in relation to the provision of the Services. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

11. WARRANTY

- 11.1. The Supplier warrants that the Customer's rights and remedies in this Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the services to which the warranty relates.
- 11.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the *Competition and Consumer Act 2010* (Cth) or any related or complementary legislation or regulations as in force and amended from time to time.

Warranty for Services

- 11.3. The Customer warrants that it will report to the Supplier any defect in any Service provided preferably within fourteen (14) days from the date that the defect became apparent.
- 11.4. To the extent permitted by law as read in conjunction with the *Competition and Consumer Act 2010* and the *Fair Trading Acts* in each of the States and Territories of Australia, the Supplier's liability in respect of defective services will be limited to:
 - 11.4.1. The re-supply of the Service; or
 - 11.4.2. The payment of the cost of having the Services supplied again; or
 - 11.4.3. The refund of the Price paid by the Customer in respect of the Service.
- 11.5. In respect of all claims the Supplier shall not be liable to compensate the Customer for any reasonable delay in remedying the defective Services or in assessing the Customer's claim. The Customer warrants that it will use its best endeavors to assist the Supplier with identifying the nature of the defective Service claim.

Claims made under Warranty

- 11.6. Subject to the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia, claims for warranty should be made in one of the following ways:
 - 11.6.1. The Customer must send the claim in writing to the Supplier's business address stated in clause 2.1 of this Agreement;
 - 11.6.2. The Customer must email the claim to the Supplier on sales@allcitysawing.com.au
 - 11.6.3. The Customer must contact the Supplier on the Supplier's business number (03) 9588 0869.

12. TERMINATION AND CANCELLATION

Cancellation by Supplier

- 12.1. The Supplier may cancel any Order to which these Terms and Conditions apply at any time before payment is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatsoever arising from such cancellation.
- 12.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 12.2.1. Any money payable to the Supplier becomes overdue; or
 - 12.2.2. The Customer 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
 - 12.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

- 12.3. Subject to the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia, the Customer may cancel any Order by providing no less than twenty-four (24) hours notice to the Supplier before the Services were due to be provided.
- 12.4. In the event that the Customer cancels the Order in writing and this is accepted by the Supplier, the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 12.5. The Supplier may retain any sum or deposit paid in respect of the Price of the Order and offset such sum or deposit in satisfaction or partial satisfaction of any sum owing to the Supplier as a result of the Customer's cancellation of the order.

13. ACCESS

- 13.1. The Customer shall, where relevant, ensure the Supplier has full and safe access to the Premises and any necessary essential services, resources, equipment, materials and information.
- 13.2. The Customer will be charged an additional fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.

14. PRIVACY ACT 1988

- 14.1. The Customer and/or the Guarantor/s agrees;
 - 14.1.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
 - 14.1.2. That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
 - 14.1.3. The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*)

15. ENTIRE AGREEMENT

- 15.1. These Terms and Conditions as defined in Clause 3.1 constitute the whole Agreement made between the Customer and the Supplier.
- 15.2. This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 15.3. This Agreement can only be amended in writing signed by each of the parties.
- 15.4. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 15.5. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.