



## SCHEDULE 1 - Terms & Conditions

Effective from 01<sup>st</sup> January 2024

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PART 1:	GLOSSARY OF TERMS .....	3
PART 2:	TERMS AND CONDITIONS.....	5
1.0	The Terms and Conditions .....	5
2.0	Entire Agreement.....	5
3.0	Acceptance of Conditions .....	5
4.0	Jurisdiction .....	5
5.0	Non-Exclusivity.....	5
6.0	Business Hours .....	5
7.0	Provision of Services .....	5
8.0	Extent of Work.....	5
9.0	Execution and Delivery.....	6
10.0	General Conditions .....	6
11.0	Minimum Charge .....	6
12.0	Inductions, Permits or Similar Articles .....	6
13.0	Work Order Instruction Cancellation or Postponement.....	7
14.0	Contracted Price .....	7
15.0	Fuel Surcharge .....	7
16.0	Rate Review .....	7
17.0	Payment Terms.....	7
18.0	Insurance .....	7
19.0	Limit of Liability and Indemnity.....	8
20.0	Refunds .....	8
21.0	Dispute Resolution.....	8
22.0	Chain of Responsibility.....	8
23.0	Force Majeure.....	8
24.0	Termination .....	9
25.0	Confidentiality.....	9

## PART 1: GLOSSARY OF TERMS

In these Terms and Conditions, unless the context otherwise requires, the use of certain words will have the following meaning:

**'Agent'** means a Person or entity that acts, or is empowered to act for, and (or) represent another Person or entity.

**'Approved route'** means the NHVR approved route(s) permissible under the NHVR road management scheme as defined by the DPTI ravnet website vehicle types, refer: [www.dpti.sa.gov/ravnet](http://www.dpti.sa.gov/ravnet)

**'Business Day'** means any day that is not a Saturday, Sunday, or Public Holiday in the State of South Australia.

**'Cancellation Fee'** means the fee charged, by the Company, when a Work Order Instruction is cancelled, re-scheduled or postponed by the Customer.

**'Cartage Rate'** means the rate charged, by the Company, for the carriage of Goods and is generally calculated as a \$Rate per ton.

**'Cartage'** means the loading of Goods and the carriage or transportation of said Goods from the point of pick-up to the point of delivery only, as specified in the Work Order Instruction.

**'Chain of Responsibility'** means the NHVR policy and procedures that places legal obligation on parties operating in the transport supply chain.

**'Clause'** refers to a clause or provision of these Terms and Conditions.

**'Confidential Information'** means any documentation, information, concept or idea of a confidential nature supplied by either party to the other in electronic, written, or verbal format and by its contents is, or is reasonable expected to be, confidential in nature.

**'Contracted Price'** means the sum specified in the applicable quote, Rate Schedule, Table or Appendix for the provision of goods, product or a Service.

**'Day Rate'** means the rate charged per hour, by the Company, when the provision of Services starts on a day that is a Business Day and is applicable Monday to Friday commencing at 06.00hr on one day and finishing at 18.00hr on the same day.

**'Demurrage'** means the rate paid by the Customer for delayed operations, following the lapse of any included laytime, in the loading or unloading of Company vehicles either directly by the Customer, agent or third party.

**'Drivers Daily Work Record'** means the record of the drivers work activities throughout each work period.

**'EPA'** means the Environment Protection Authority

**'EPA Rate'** means the rate charged, by the Company, for the carriage or transportation of contaminated materials as defined or categorised by the Environment Protection Authority (EPA) for which the transport operator requires an EPA licence.

**'FOC'** means Free of Charge.

**'Force Majeure'** means an unforeseeable and unknown event occurring after the start date of any negotiation, engagement or agreement and that event is beyond the reasonable control of the parties which precludes a party from performing on time their obligation under these Terms and Conditions.

**'Goods'** means any tangible item, material or product, supplied, stored, carried, or transported by the Company for and on behalf of the Customer in the process of providing the Service(s).

**'Hourly Hire'** means the calculation per hour or part thereof, by the Company, for the provision of Services and shall be inclusive of all time taken to make effective entry to, or exit from, a Customers Work Site or sites. Hourly Hire will also be inclusive of all delays or breaks from work howsoever caused and any other additional time taken to perform the Services. Hourly Hire in-excess of the Minimum Hire Period is measured in 15 (fifteen) minute or part thereof increments.

**'Law'** means any statute, regulation, order, rule, subordinate legislation, or other document enforceable under any statute, regulation, order, rule, or subordinate legislation.

**'Laytime'** means the amount of time included in the provision of cartage services for the Customer, agent, or third party to carry out the loading or unloading of goods carried by the Company.

**'Materials'** means the raw unprocessed or a modified liquid, natural, organic, or manufactured substance from which something else can be manufactured.

**'Minimum Charge'** means the minimum sum payable per included work period, by the Company, for the provision of Services as detailed in a Work Order Instruction.

**'Minimum Payload Quantity'** means that where the carriage of Materials is less than the maximum permissible cartage quantity for the vehicle supplied, a Minimum Payload Quantity / Volume is charged.

**'Negligence'** means doing or failing to do something that a reasonable person would or would not do in a certain situation and damage, injury or loss occurs to someone as a result.

**'NHVR'** means the National Heavy Vehicle Regulator.

**'Night Rate'** means the rate charged per hour, by the Company, when the provision of Services starts on a Business Day and is applicable Monday to Friday from 18.00hr on one day and finishes at 06.00hr the following day.

**'Notice'** means a notice, demand, consent, approval, or communication.

**'On-site Waiting Time'** means the additional time taken after the lapse of any time included in the Cartage Rate to provide the Services at the Work Site. On-site Waiting Time is charged in 15 (fifteen) minute or part thereof increments and is in addition to the applicable Cartage Rate. On-site Waiting Time, however so caused, is charged at the respective Hourly Hire Rate for the vehicle provided.

**'Out-of-Hours Service Fee'** means the administration fee charged, by the Company, for receiving and (or) attending to urgent matters, requiring immediate attention, during periods other than on Business Days during Business Hours.

**'Out-of-Hours'** means the period of time between the closure of Business Hours on one Business Day and the start of Business Hours on the next Business Day.

**'Out-of-Pocket Expenses'** means the non-contracted price, costs, expenses, or monies that are paid directly to a third party for necessary items, goods, or services that the Company reasonably incurs in performing the services, and those costs, expenses or monies are not covered by a Contracted Price or Agreement.

**'Party'** means a person, individual, Company, Customer or organisation named as the customer and any dealings and liability shall be deemed to be joint and several.

**'PCBU'** means a Person Conducting a Business Undertaking.

**'Person'** shall include a PCBU, an individual, their heirs, executors and assigns, a body politic, a corporation, an association, a business entity and, a statutory or other authority (*incorporated or unincorporated*).

**'Price'** means the dollar rate paid for the provision of Goods and Services and excludes Goods and Services Tax (GST).

**'Public Holiday'** is any day of the week, declared a Public Holiday in the State of South Australia.

**'Public Holiday Rate'** means the rate charged per hour, by the Company, when the provision of Services starts on any day that is a Public Holiday in the State of South Australia and is applicable from 00.00hr and finishes at 24.00hr on the same day. When a work period starts on a Public Holiday and continues through another work period then the whole work period shall be paid at a Public Holiday rate.

**'Terms and Conditions'** means these Terms and Conditions.

**'Services'** means all intangible products supplied by the Company to the Customer and are as described in a Work Order Instruction, quotation, Drivers Daily Work Record, Job Docket Report, or similar article.

**'Site Establishment'** means the temporary establishment of an operating facility by the Company, inclusive of relocating plant and equipment and anything else necessary to another location in preparation of Works to be carried out at the Work Site.

**'Stand-Alone'** means a product or service that is exclusive and does not include the features or functionality of any other product or service. Each product or service

offered by the Company is a stand-alone product or service and any similarity to any other product or service is merely coincidental.

**'Standby'** means the situation, referred to as 'On Call' or 'On Hold' where the Customer requests that the services or equipment of the Company are temporarily held in a state of readiness, exclusively for the Customer's works, but are not put into operation by the Customer until needed. During Standby, the Company is unable to re-assign the standby services or equipment to another party.

**'Standby Rate'** means the rate charged when the Company is required to be 'On Call' or 'On Hold' at the Customer's request.

**'Sub-contractor'** means a person, business or corporation that provides services to another entity under terms and conditions specified within a written or verbal contract or agreement.

**'Supplier'** means a PCBU, a person, business, contractor, or corporation other than the Company, that offers for consideration Goods and (or) Services to another entity for which payment is made in accordance with a written or verbal contract or agreement.

**'Supplier Service Fee'** means the fee, charged by the Company, whereby the Company has acted as Agent for the Supplier, for the supply of goods and services not covered by a Contracted Price and is in addition to the Suppliers Tax Invoice for Goods or Services supplied to the Customer.

**'the Company'** means ANH Transport Services Pty Ltd and includes its Directors, employees and authorised representatives.

**'the Customer'** means the person or corporation (*incorporated or unincorporated*), or organisation who is the recipient of the goods, services or products provided by the Company.

**'Transition Day'** means the day a worker is unable to work when transitioning between alternating work rosters, *for example: night shift roster and a day shift roster*.

**'Travel Time'** means:

- a) the kilometre distance travelled; or,
- b) the time (hourly) taken,

by the Company, in travelling to and or from, the Work Site. When Travel Time is not included in another rate structure, Travel Time is charged, by the Company, in addition to any other applicable fees and charges.

**'Weekend'** is any day that is a Saturday or Sunday that is not a Public Holiday.

**'Weekend Rate'** means the rate charged per hour, by the Company, when the provision of Services starts on a day that is not a Business Day or Public Holiday and is applicable on a Saturday commencing at 06.00hr and continues to 06.00hr on the following Monday.

**'Works'** means each activity, task or undertaking required individually or collectively to complete the work including the provision of Goods or Services.

**'Work Order Instruction'** means the instruction in written, verbal, or electronic format, issued by the Customer, detailing the scope of works and the extent of the supply of Goods and Services by the Company to the Customer.

**'Work Order Variation'** means an alteration, other than a cancellation, to the scope of works in the form of an addition, substitution, or omission from the original Work Order Instruction.

**'Work Site'** shall mean any site(s) whereby the Works and (or) the provision of Goods or Service is either wholly or partially provided.

## PART 2: TERMS AND CONDITIONS

### 1.0 The Terms and Conditions

- 1.1 These Terms and Conditions shall apply to all negotiations, engagements and dealings between the Company and the Customer.
- 1.2 Where there is more than one Person named in the Terms and Conditions as the Customer then the obligations of the Customer pursuant to these Terms and Conditions shall be joint and several.

### 2.0 Entire Agreement

- 2.1 These Terms and Conditions constitute a complete and exclusive statement of the agreement and understanding between the Company and the Customer with respect to the subject matter hereof and supersede all prior arrangements between the parties either written, oral or established through the course of dealings.
- 2.2 These Terms and Conditions cannot be varied except in writing and signed by a duly authorised officer of the Company.
- 2.3 Specific and individual clauses contained within these Terms and Conditions may be waived at any time in relation to a specific Work Order Instruction and, solely at the discretion of the Company.
- 2.4 In the event that a Clause, or provision of these Terms and Conditions is unenforceable, that Clause or provision will be severed, and all remaining Clause or provision will continue to apply.
- 2.5 In the event that the Company provides Goods or Services to the Customer and that engagement is covered under a Subcontractor Agreement, then the provisions of the Subcontractor Agreement shall take precedence over the Company's Terms and Conditions.

### 3.0 Acceptance of Conditions

- 3.1 Receipt of a Work Order Instruction by the Company constitutes the acceptance of these Terms and Conditions by the Customer throughout any negotiations or period of engagement.
- 3.2 The Company may change these Terms and Conditions at any time. The Customer will be bound by the amended Terms and Conditions for all future Work Order Instructions following the notice of the changed Terms and Conditions being provided to the Customer.
- 3.3 All notices will be deemed to have been received within two (2) business days of publishing on the Company's website, or handing to, posting, faxing, or emailing to the Customer or their representative.
- 3.4 Any discrepancy or misunderstanding arising from these Terms and Conditions shall be read and construed so as to vary the Terms and Conditions, but only to the extent of any inconsistency.

### 4.0 Jurisdiction

- 4.1 The negotiation, engagement, contract and agreement or any other dealings with the Company shall be governed by and construed in accordance with the law in effect in South Australia.
- 4.2 The Parties hereto accept the jurisdiction of the Courts of South Australia, in relation to any dispute between them.

### 5.0 Non-Exclusivity

- 5.1 These Terms and Conditions:

- 5.1.1 are non-exclusive Terms and Conditions; and,
- 5.1.2 the Company and (or) the Customer are not restricted in any way from dealing with other companies, businesses, or organisations not party to these Terms and Conditions with respect to providing or securing the same or similar Goods or Services which are the subject of these Terms and Conditions.

### 6.0 Business Hours

- 6.1 A Business Day is any day that is not a Saturday, Sunday, or Public Holiday in the State of South Australia.
- 6.2 Business Hours on Business Days are:

Monday to Friday:	<b>06.00hr to 18.00hr</b>
All other times:	<b>Out-of-Hour's service</b>
- 6.3 Unless stated otherwise, all work will be scheduled for Business Days (Monday to Friday) during Business Hours (06.00hr to 18.00hr).
- 6.4 Works scheduled for any other time, by the Customer, will be provided and will incur additional fees and (or) charges as per the applicable quote, Schedule(s), Tables or Appendix.

### 7.0 Provision of Services

- 7.1 The Company will, at all times, use their best efforts to protect and advance the business interests of the Customer.
- 7.2 The Company will carry out the reasonable requirements of the Customer in connection with a Work Order Instruction provided that:
  - 7.2.1 such requirements are lawful; and,
  - 7.2.2 does not place the health and safety of any individual in jeopardy; and,
  - 7.2.3 is within the scope of services provided by the Company; and,
  - 7.2.4 any such work is paid in accordance with this Terms and Conditions.

### 8.0 Extent of Work

- 8.1 The Customer acknowledges that by placing a Work Order Instruction with the Company, the Customer is making an unconditional offer to enter into a contractual agreement with the Company subject only to these Terms and Conditions.
- 8.2 A Work Order Instruction provided by the Customer shall be a separate and individual engagement for the supply of Goods and (or) Services at the Contracted Price.
- 8.3 Each Work Order Instruction will be subject to a review and acceptance by the Company.
- 8.4 The Work Order Instruction is to detail the scope of works and the total extent of Goods and (or) Services to be supplied by the Company, to the Customer, pursuant to each individual Work Order Instruction.
- 8.5 The Customer may vary or withdraw a Work Order Instruction at any time prior to its acceptance by the Company. Thereafter cancellation fees may apply.
- 8.6 The Customer is solely responsible for satisfying itself, by whatsoever means available, as to the suitability of the included Goods and (or) Services for the Customers intended use, purpose, or application.
- 8.7 In the event that the Customer issues a Work Order Variation the Company shall:
  - 8.7.1 be able to review the Work Order Instruction and its relevant Work Order Variation; and,
  - 8.7.2 shall not be bound to accept any Work Order Variation that is outside the scope of the work; and,

8.7.3 upon acceptance of the Work Order Variation, the Company shall make any changes to the supply of Goods and Services to complete any changes; and,

8.7.4 the Customer agrees to indemnify the Company against all losses and additional expenses associated with, or arising from, the inclusion of a Work Order Variation permitted by the Company.

**9.0 Execution and Delivery**

9.1 With the exception of Out-of-Hours services, Work Order Instructions received outside of Business Hours, Clause 9.2, will be deemed to have been received by the Company at the start of the next business day.

9.2 The Customer acknowledges that a Work Order Instruction, or a Work Order Variation, received outside of Business Hours, at short notice, for which the Customer requires the Company to urgently act upon, requiring immediate attention in some way, will in all cases be deemed to be Out-of-Hours services and will incur Out-of-Hours Service Fees.

9.3 Until a Work Order Instruction has been accepted by the Company, there is no implied, stated, or guarantee that Goods and Services specified in the Work Order Instruction will be supplied by the Company, or other Supplier.

9.4 Delivery of Goods at the Work Site is deemed to have taken place when the delivery vehicle arrives:

9.4.1 at the kerbside adjacent to the Work Site; or,

9.4.2 at the start of any traffic-controlled area of Works within which the delivery Work Site is located.

9.5 The provision of Services is deemed to have commenced two (2) hours prior to the scheduled on-site start time. This provides for Pre-Start inspections, toolbox meetings etc and preparation inclusive of the travel to the Work Site by the Company.

9.6 It is the responsibility of the Customer to supply the Company with the correct Work Site details and to manage, control and supervise each Work Site, to enable an effective delivery of the Goods or Services to be rendered to the Customer, at the Work Site(s).

9.7 Unless instructed in writing prior to the commencement of the provision of Goods or Services in relation to a Work Order Instruction, the Customer, or its representative at the Work Site, is authorised to request and approve changes to the Work Order Instruction. If accepted by the Company, any change to a Work Order Instruction shall be deemed to be a Work Order Variation.

9.8 The Company is authorised to import Goods to the Work Site, and it shall be taken that the Company has imported the Goods in accordance with a Work Order Instruction by obtaining a signature on the Drivers Daily Work Record, delivery docket or similar document. In the event that no Persons are present, the import of Goods is deemed to have taken place by importing and depositing the Goods at the Work Site.

9.9 Prior to exporting Materials, including Materials deemed or suspected of being contaminated waste, from the Work Site, the Customer will have the necessary supporting documentation and authority to excavate, transfer and deposit the Materials to another location.

9.10 When an import or export of Goods cannot be executed at the nominated Work Site, the Customer authorises the Company to return the Goods to the place of origin, or an alternative Work Site and the Customer accepts liability for all additional fees and charges incurred by the Company or Supplier in doing so.

9.11 The Customer shall be deemed to authorise the Company to deviate from any pre-determined route that, at the discretion of the Company, is deemed necessary and reasonable in the circumstances.

9.12 The failure of the Company to import or export the Goods or provide Services on time, due to unforeseen circumstances shall not entitle either party to treat this agreement as repudiated and no Person will be entitled to claim a refund or compensation as a result of the Company exercising its rights under this clause.

9.13 A signed Drivers Daily Work Record, delivery docket, Work Order Instruction or similar document supplied by the Company will constitute acceptance of the Goods or Services provided to the Customer.

9.14 If no Persons are present, then the Customer has twenty-four (24) hours in which to notify the Company of any discrepancy, thereafter the Customer accepts that the Goods or Services have been provided as detailed in the Work Order Instruction, quotation, Drivers Daily Work Record, Job Docket Report or similar document.

**10.0 General Conditions**

10.1 Pursuant to completing each Work Order Instruction, the Company may from time to time, at its sole discretion, utilise the services of other Suppliers and PCBU's to meet fluctuations in demand. The Customer agrees to accept such Suppliers Terms & Conditions.

10.2 The Company accepts no responsibility for any verbal, written or implied Terms and Conditions, warranties or guarantees provided by a Supplier or any third party.

10.3 The Company is liable solely for the inclusions accepted in each Work Order Instruction, quotation or other document supplied by the Company.

10.4 At all times the Company retains absolute control of any Company owned and operated equipment, inclusive of quantity and type of Goods carried or transported and the effective execution and delivery of Goods or Service provided to the Customer.

10.5 Where a clerical or administrative error has been made by the Company, that error can be corrected at any time by the Company, by giving notice to the Customer of said error and its correction.

**11.0 Minimum Charge**

11.1 In a work period when the Company provides Services in accordance with a Work Order Instruction, and the extent of any Services provided in the execution of a Work Order Instruction is less than the Minimum Hire Period stated in the applicable Rate Schedule, then the invoiced minimum charge will be adjusted to equal the applicable Minimum Charge, plus any other fees and charges payable.

11.2 In a work period when the extent of Services provided, in accordance with a Work Order Instruction:

11.2.1 commences in one rate period and transitions into another rate period, then the Hourly Hire Rate charged for the whole period shall be the applicable rate for the majority portion of the work period: or,

11.2.2 commences in one rate period and transitions into another rate period and equal time has been spent in each rate period, then the Hourly Hire Rate charged shall be the applicable rate at the start of the work period: or,

11.2.3 commences on a Public Holiday and transitions into another rate period then the whole work period shall be deemed to be a Public Holiday and the applicable Public Holiday rate will apply.

**12.0 Inductions, Permits or Similar Articles**

- 12.1 The Customer agrees to indemnify the Company, against all losses arising from the extent of the works, pursuant to the requirements of a specific Work Order Instruction that requires additional training, permits, security clearances / passes, work site inductions, medicals, or similar articles.
- 12.2 On-site inductions of less than 15 (fifteen) minutes are included in the applicable rate charge.
- 12.3 On-site inductions in excess of 15 (fifteen) minutes will be charged to the Customer at the applicable Hourly Hire Rate.
- 12.4 External training, on-line inductions, attendance for medicals or similar articles will be charged to the Customer at an hourly rate / per person / per occasion basis at the applicable hourly hire rate.
- 12.5 Where a cost is incurred by the Company for Passes, Permits, medicals or similar article, the Customer will be charged and hereby agrees to reimburse the Company at the cost price / per item for each Pass, Permit or similar article when that price is not covered by a Contracted Price.

### **13.0 Work Order Instruction Cancellation or Postponement**

- 13.1 In the event that a Work Order Instruction is cancelled, postponed or re-scheduled in some way, at short notice, through no fault of the Company, or as a result of any cause, howsoever caused, which the Customer is, or should reasonably have been aware, the Customer hereby agrees to pay on demand, the Company, to the extent of any applied Cancellation Fees plus any other applicable fees and charges incurred by the Company in connection with the cancelled Work Order Instruction.
- 13.2 For the purposes of a cancelled, postponed or re-scheduled Work Order Instruction, short notice shall include, but is not limited to:
  - 13.2.1 less than 4 x hours prior notice to the start of the work; or,
  - 13.2.2 after 14.00hr on a Business Day (Monday to Friday), when the work is scheduled to start at a time after the closure of Business Hours and prior to the next period of Business Hours
- 13.3 The Customer acknowledges and agrees that where the Work Order requires that the Company is temporarily working away from home, the Company will not permit a Work Order Instruction to be partially cancelled for any reason. At the instruction of the Customer, and for reasons beyond the control of the Company, the Company may be temporarily required not to work. In all cases the Customer will be liable to pay the Minimum Charge for the work period as if it had been worked.
- 13.4 When a deposit has been paid by the Customer, the Company is authorised to retain the deposit towards payments outstanding and payable to the Company pursuant to Clause 13.0

### **14.0 Contracted Price**

- 14.1 The Contracted Price of the Services provided by the Company are as specified in the applicable Schedules, Tables, Appendix, invoice or other similar document provided by the Company. However, such contracted price is provided as a guide only and may vary due to changes in demand, quantity, surcharges, fuel costs, additional fees, or taxes.
- 14.2 Where there is no contracted price stated in the Terms and Conditions or its Schedules, Tables or Appendix, then the price for goods and services shall be the agreed price determined from time to time.
- 14.3 The Contracted Price excludes Goods and Services Tax (GST).
- 14.4 Goods and Services Tax (GST) will be applied to applicable Goods or Services at the published rate and will be in addition to the price quoted on any documents.

- 14.5 Unless stated otherwise, a Supplier Service Fee will be applied to each Suppliers Tax Invoice total for the provision of the Goods or Services supplied to the Customer pursuant to each Work Order Instruction.

### **15.0 Fuel Surcharge**

- 15.1 The Fuel Surcharge is a variable charge and is relative to the Terminal Gate Price (TGP) for diesel fuel as listed by the Australian Institute of Petroleum (AIP) website; [www.aip.com.au/pricing/terminal-gate-prices](http://www.aip.com.au/pricing/terminal-gate-prices)
- 15.2 A Fuel Surcharge will be additional to the normal service charges and will be a separate entry on each invoice.
- 15.3 For calculation the base rate fuel price is \$1.50 per litre excluding GST. The Fuel Surcharge will be adjusted in accordance with the rise and fall of the TGP daily fuel price.

### **16.0 Rate Review**

- 16.1 A rate review of the Contracted Price and its inclusions will be conducted at the six (6) monthly intervals in January and July of each year.
- 16.2 Any such revised Contract Price or inclusions will become the new Contracted Price or inclusion.

### **17.0 Payment Terms**

- 17.1 A tax invoice will be provided by the Company for all Goods or Services rendered to the Customer. The Company DOES NOT issue or provide monthly account statements.
- 17.2 For all approved Customers of the Company with an account, the price is to be paid by the 21<sup>st</sup> (twenty first) day of the calendar month following that in which the Goods or Services were provided by the Company, or as stated in the Terms and Conditions.
- 17.3 For all other Customers, the price is to be paid in full on or before the supply of Goods or Services by the Company.
- 17.4 Should the Customer delay or default in respect to any payment due to the Company, the Company shall have the right, in addition to all other rights or remedies the Company has, to charge interest in excess of such rate charged from time to time by the Company's bank for overdrafts. Such interest shall be calculated from the date the payment was due, to the date of full payment by the Customer. Any payment made by the Customer will first be credited against the interest accrued to the date of payment.
- 17.5 If the Customer defaults in payment the Customer agrees to pay all reasonable debt collection costs, including, but not limited to commissions, interest, and legal fees.
- 17.6 The Company may without notice, at any time, cancel an approved account, whereupon all amounts outstanding by the Customer shall become due and payable immediately.
- 17.7 All amounts owed to the Company by the Customer shall be due and payable immediately in the event of the Customer committing an act of bankruptcy, a mortgagee taking possession of the Customer's assets, a receiver of assets is appointed, or a petition of bankruptcy or liquidation is appointed.
- 17.8 At no time does the Company authorise or consent to, and, the Customer is not entitled to make a deduction or retain a sum of money, from any invoiced price payable to the Company.

### **18.0 Insurance**

- 18.1 The Customer utilises the Goods or Services provided by the Company at entirely their own risk and acknowledge that plans can be disrupted at any

time by unforeseen and unexpected circumstances. The Customer acknowledges that the Company does not include any insurance for Goods carried or transported. The Company recommends that all Customers take out appropriate insurance to cover risks caused by factors outside of the direct control of the Company (including but not limited to, communication delays, industrial disputes, fire or accident, natural catastrophe, acts of terrorism, war, personal accident or illness, pandemic, loss or damage to Goods or personal property). The Company is not liable for any losses, injury or damage suffered by the Customer and no claims for compensation will be accepted.

## 19.0 Limit of Liability and Indemnity

19.1 The Customer hereby acknowledges and agrees that:

- 19.1.1 the Customer will rely solely on the Customers own knowledge and expertise in ascertaining the suitability of the Company, and (or) its Suppliers to provide Goods and (or) Services for a specific Work Order Instruction; and,
- 19.1.2 any advice or assistance given to the Customer by the Company, or its Supplier, is given as general advice only and shall not be deemed to have been given as that of an expert, consultant, or technical adviser; and,
- 19.1.3 the Customer accepts full responsibility on the placement of a Work Order Instruction with the Company having independently ascertained the extent of any works or content for the supply of Goods and (or) Services; and,
- 19.1.4 in the event that the Company utilises a Supplier, the Company will act as Agent only for the Goods and (or) Services to be supplied by a Supplier, and are to be provided to the Customer, pursuant to a Work Order Instruction; and,
- 19.1.5 the Company does not warrant or guarantee any such Goods or Services and the reliability of any communication given by a third party; and,
- 19.1.6 the Company will not be liable for any loss or damage howsoever suffered by the Customer as a result of incorrect assessment or identification of the extent of works, or selection of the included Goods and (or) Services; and,
- 19.1.7 the Company will not give credit for incorrect order placement of Goods and Services.

19.2 To the maximum extent permissible by Law the Customer hereby indemnifies and forever holds harmless the Company, its Agents, and Suppliers from any claim for loss, consequential loss, damage, property damage, injury, or death, arising out of or caused or contributed to by the negligent or wilful act or omission, or any breach of these Terms and Conditions arising from the engagement and provision of any Goods or Services.

19.3 The Company will not be liable to the Customer in contract, in tort or otherwise arising from the performance, execution or as a result or an error regarding information supplied to the Customer before or after delivery of the Goods and (or) Services.

## 20.0 Refunds

20.1 The Customer is solely liable for any loss or damage howsoever incurred from under or over-estimating the extent of works required. Where the Goods or

Services have already been supplied, the Company will not provide credit for incorrect order placement.

20.2 In accordance with these Terms and Conditions, a refund provided by the Company will be limited only to the amount already paid by the Customer to the Company for a specific Work Order, quotation, or invoice, less any non-refundable fees and charges imposed.

## 21.0 Dispute Resolution

- 21.1 In the event that a Customer has a dispute with the Company, they must provide written notice to the Company and provide all documentation or information in support of their claim as soon as is practicable and, in any event, no later than thirty (30) days following the matter in dispute arising.
- 21.2 The Customer accepts that any decision, process or finding by the Company is not to be construed by any Person to be an admission of guilt, or wrongdoing, on behalf of the Company.
- 21.3 In the event that a dispute is not resolved by the Company to the Customer's reasonable satisfaction, then the matter shall be referred to an independent arbitration service in South Australia.
- 21.4 The party seeking further resolution to any dispute shall be liable to pay all their up-front costs imposed by the arbitration service in the performance of its duties.
- 21.5 In all cases the findings and recommendations of the independent arbitration service will be final and binding on all parties in the matter.

## 22.0 Chain of Responsibility

- 22.1 Each party to the Terms and Conditions will ensure compliance with, and the management of, their Chain of Responsibility obligations.
- 22.2 The Parties will not directly or indirectly, by any negligent act or omission engage in a business practise, procedure or make any direction implied or adopted over time that causes or has the effect of causing a potential breach of any laws or other requirements relating to the Chain of Responsibility.

## 23.0 Force Majeure

- 23.1 If a Force Majeure event cause delay or failure by a party to perform its obligations under this Terms and Conditions:
  - 23.1.1 neither party is liable for such delay or failure; and,
  - 23.1.2 all obligations of a party under this Terms and Conditions are suspended until the Force Majeure event cease to apply.
- 23.2 A party which is, by reason of a Force Majeure event, unable to perform under the terms of this Terms and Conditions must:
  - 23.2.1 take all steps possible to minimise the effect and duration of the Force Majeure event; and,
  - 23.2.2 give the other party as soon as possible written notice of the particulars of the Force Majeure event; and,
  - 23.2.3 provide an estimate of the time required to remedy the Force Majeure event and for it to resume performance of its obligations under this Terms and Conditions.
- 23.3 If the Force Majeure delay or failure under this clause exceeds 30 days the Company may immediately terminate this Terms and Conditions by providing written notice to the Customer.
- 23.4 Upon termination under this clause:
  - 23.4.1 all monies owed by the Customer for works already completed by the Company; plus,

23.4.2 any reasonable and substantiated additional costs or expenses incurred as a result of the terminating the Terms and Conditions are immediately due and payable.

## **24.0 Termination**

24.1 The Terms and Conditions shall terminate immediately in the event of the Customer committing an act of bankruptcy, a mortgagee taking possession of the Customer's assets, a receiver of assets is appointed, or a petition of bankruptcy or liquidation is appointed.

24.2 Upon termination under clause 24.1:

24.2.1 all monies owed by the Customer for works already completed by the Company; plus,

24.2.2 any reasonable and substantiated additional costs or expenses incurred as a result of the terminating the Terms and Conditions are immediately due and payable.

## **25.0 Confidentiality**

25.1 Each party agrees that it will not use or disclose any Confidential Information of the other party or allow any Confidential Information of the other party to be used, or disclosed, for any purpose, except for its intended purpose and manner contemplated or arising from any business dealings.

25.2 Each party consents to either party making disclosures made to a third party to the extent of complying with its obligations under the Freedom of Information Act, or its requirement under any other law or legislation.

25.3 Unauthorised disclosure of any Confidential Information constitutes a breach of a party's obligations under these Terms and Conditions.

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