

TERMS OF ENGAGEMENT

1. Definitions

1.1 In these Terms:

"ACL" means Schedule 2 of the Competition and Consumer Act 2010 otherwise known as the Australian Consumer Law;

"Agreement" means any agreement for the provision of services by the Supplier to the Customer;

"Consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

"Customer or Client" means the person, company, entity or Principal jointly and severally if more than one, acquiring services from the Supplier;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"price list" means the price list provided by the Supplier to the Customer;

"Principal" has the meaning given in clause 14.28.

"PPSA" means the *Personal Property Securities Act* 2009 as amended;

"Supplier" means ENVIRONMENTAL LOCATION SYSTEMS PTY LTD A.C.N. 068 869 769;

"Services" means services supplied by the Supplier to the Customer; and

"Site" means the site where the Customer requests the Supplier to provide the services

"Terms" means these Terms and Conditions of Trade.

Headings are for convenience only and do not affect interpretation

The following rules apply unless the context requires otherwise:

1.2 The singular includes the plural and the converse also applies.

1.3 A gender includes all genders.

1.4 If a word or phrase is defined in this clause, its other grammatical forms have a corresponding meaning.

1.5 A reference to a person includes a corporation, trust, partnership, incorporated body or other entity, whether or not it comprises a separate legal entity.

1.6 A reference to a clause or schedule is a reference to a clause or schedule of the Terms.

1.7 A reference to an agreement or document (including a reference to the Terms) is to the agreement or document as amended, supplemented, novated or replaced except to the extent prohibited by the Terms or that other agreement or document.

1.8 A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.

1.9 A reference to a party to the Agreement or Terms includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal representatives).

1.10 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it.

2. Basis of Agreement

2.1 Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by the Supplier to the Customer for the proposed supply of services is:

(a) valid for 30 days;

(b) an invitation to treat only; and

(c) only valid if in writing.

2.3 The Terms may include additional terms in the Supplier's quotation which override the Terms if there is an inconsistency.

2.4 An Agreement is accepted by the Supplier when the Supplier accepts, in writing or by electronic means, an offer from the Customer or provides the Customer with the services.

2.5 The Supplier has absolute discretion to refuse to accept any offer.

2.6 The Customer must provide the Supplier with its specific requirements, if any, in relation to the services.

2.7 The Supplier may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 Prices quoted for the supply of services are subject to GST and any other taxes or duties imposed on or in relation to the services.

3.2 If the Customer requests any variation to the Agreement, the Supplier may adjust the price to account for the variation.

3.3 Where there is any change in the costs incurred by the Supplier in relation to services, the Supplier may vary its price to take account of any such change, by notifying the Customer.

4. Payment

4.1 Unless otherwise agreed in writing:

(a) Subject to 4.1(b), full payment for the services must be made in accordance with the terms of the Supplier's invoice to the Customer.

(b) The Supplier reserves the right to require payment in full in cash, immediately upon completion of the services.

(c) Customers who have not completed a Credit Application provided by the Supplier to the Customer shall make payment in full to the Supplier, immediately upon completion of the services

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the Supplier's sole discretion immediately upon giving the Customer written notice.

4.4 The time for payment is of the essence.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent right :

(a) charge the Customer interest on any sum due at the rate of 24% per annum calculated daily for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify the Supplier from, all reasonable costs and expenses (including without limitation all legal costs and expenses on a full indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or any other action in relation to enforcing its rights under the PPSA;

(c) cease or suspend supply of any further services to the Customer;

(d) by written notice to the Customer, terminate any uncompleted contract with the Customer.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the Supplier's option:

(a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Personal Property Securities Act

6.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

6.2 For the purposes of the PPSA:

(a) terms used in clause 6 that are defined in the PPSA have the same meaning as in the PPSA;

(b) The Customer grants the Supplier a first ranking security interest in all its present and after acquired assets.

(c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and

(d) the Customer must do whatever is necessary in order to give a valid security interest to the Supplier on the Personal Property Securities Register.

6.3 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

6.4 To the extent permitted by the PPSA, the Customer agrees that:

(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and

(b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

6.5 The Customer must immediately upon the Supplier's request:

(a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and

(b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.

6.6 The Customer hereby provides the Supplier with a Power of Attorney under Part XIA of the *Instruments Act 1958* insofar as the Customer appoints the Supplier to be its attorney and authorises the Supplier to do on its behalf anything that the Customer may lawfully authorise an attorney to do in relation to execution of any documents to give effect to the Supplier's security interest as a secured party under the PPSA and to ensure that the Supplier's interest is perfected, attached and registered on the register in accordance with the provisions of the PPSA to ensure that the Supplier has a valid security interest, a Purchase Money Security Interest and that the Supplier has the greatest priority available to it under the PPSA. The Customer warrants that the Terms have the effect of a deed.

7. Risk and Insurance

7.1 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the services, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

8. Performance of Agreement

8.1 Any period or date for provision of services stated by the Supplier is an estimate only and not a contractual commitment.

8.2 The Supplier will use its reasonable endeavours to meet any estimated dates for supply of services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

8.3 If the Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.

9. Delivery

9.1 Subject to clause 11.1, the Supplier will arrange for the provision of the services to the Customer.

9.2 The Supplier may make part provision of services and the Supplier may invoice the Customer for the services provided.

9.3 The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of providing the services.

10. Liability

10.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, acceptability, fitness for purpose or performance of the services or any contractual remedy in relation thereto.

10.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.

10.3 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

10.4 The Customer acknowledges that:

(a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the services or their use or application.

(b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the services and it has the sole responsibility of satisfying itself that the services are suitable for the use of the Customer.

10.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of services which cannot be excluded, restricted or modified.

10.6 To the extent permissible by law, the Supplier accepts no responsibility or liability whatsoever for any negligent damage caused as a result of the services including but not limited to, water damage, structural damage and damage to services or utilities situated on the site.

11. Cancellation

11.1 If the Supplier is unable to provide the services, then it may cancel the Customer's order (even if it has been accepted) by giving written notice to the Customer.

11.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier once the order has been accepted.

12. Shortages and Exchanges

12.1 The Supplier will not be liable for fault in the services provided unless the Customer notifies the Supplier with full details and description of the said fault within 7 days of provision of the services otherwise the Customer is deemed to have accepted the service and any fault in the services is not attributable to the Supplier.

12.2 When any fault with the services is acknowledged by the Supplier, the Supplier may, at its option, replace or remedy the services or refund the Customer for the faulty services.

12.3 The Supplier will not under any circumstances accept liability in any way where:

(a) The services have been altered in any way;

(b) The services are impacted by others or the services have been interfered with; or

(c) The services are not in their original condition.

12.4 If the Customer is a consumer, nothing in this clause 12 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

13. Force Majeure

13.1 The Supplier is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, the Supplier may suspend or terminate the Agreement by written notice to the Customer.

14. Miscellaneous

14.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

14.2 The Supplier's failure to enforce any of these Terms shall not be construed as a waiver of any of the Supplier's rights.

14.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

14.4 The Customer agrees that the Supplier may set off any amounts owing to the Supplier under the Terms or as against any moneys that the Supplier may owe the Customer.

14.5 The Customer is not entitled to set off any claims it may have against the Supplier against any other monies owing to the Supplier by the Customer.

14.6 The Customer hereby charges all its real property in favour of the Supplier with respect to of any debt owing to the Supplier for the services and grants the supplier a Caveatable interest in all its real estate.

14.7 Notice is deemed to be given by the supplier to the Customer by sending a letter of facsimile or email to the Customer to either its registered office or principal place of business or the place of residence of its Director or place of residence if a natural person and is deemed to be received upon posting if sent by mail. Notice can also be given via email to the email address of Customer as advised to the supplier from time to time. Notices sent by facsimile or email are deemed received on confirmation by the Supplier of successful transmission.

14.8 The Customer must comply with the National Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.

14.9 The terms may only be amended in writing by the parties and any such amendment must be signed by a duly authorized officer of the Supplier.

14.10 The Customer consents to accept service of any Court proceeding, Originating Process, any other documents relevant to any Court proceeding, any Notice required to be given under the Terms or Agreement by having that document faxed or emailed to the fax or email address that the Customer has provided to the Supplier from time to time or by being posted or delivered to the principal place of business of the Customer.

14.11 Water, water mains and suitable water pressure are to be provided by the Customer to the Supplier within 90 meters of the site without interruption and at the Customer's own cost. Suitable electricity is to be provided by the Customer to the Supplier within 20 meters of the site without interruption and at the Customer's own cost.

14.12 To the extent that is necessary for the Supplier to gain access to private land (the "property") to perform services for the Customer, then :-

- The Customer warrants that it is legally able to grant that permission: and
- Grants to the Supplier a licence to the Supplier to gain access to the property to perform the services or to re perform the services as is reasonably necessary.

14.13 The Supplier takes all reasonable care in locating and marking the location of underground services however, where work is to be conducted in the vicinity of the services so marked or in any other location identified by the Supplier, it is the responsibility of the Customer to establish the presence or absence (as the case may be) of the services by hand excavation prior to the commencement of work. Except as provided in these conditions, the Supplier, shall be under no liability whatsoever to any person for loss or damage (including indirect or consequential loss or damage including loss of profit) howsoever caused (including, without limitation, breach of contract, tort or breach of statute or all three) which may be suffered or incurred from or in connection with the services or goods supplied by the Supplier.

14.14 The Supplier and Customer agree subject to any written warranty provided by the Supplier to the Customer and any rights which cannot be excluded by law including the ACL ("Non-Excludable Rights") all warranties, conditions, liabilities or representations as to the accuracy of information, advice or other services concerning the services, are expressly excluded.

14.15 The Customer must supply all current (less than (30) days old) Dial Before You Dig plans for the Supplier's use in carrying out the services. The Supplier can supply a copy of these plans to the Customer upon receiving five (5) clear business days' notice from the Customer to do so. The Supplier does not warrant or take responsibility for the accuracy of the plans.

14.16 The Supplier will conduct the services in accordance with guidelines established under AS5488.2013 and the Customer must conduct its work in accordance with those guidelines and it is the responsibility of the Customer to familiarize themselves with the relevant guidelines.

The Supplier provides electronic, minimal risk in the locating of objects and defects within concrete and soil utilising Ground Penetrating Radar systems.

14.17 Whilst precise and top of the range GPR, along with fully trained and specialised personnel are utilised for all surveys, there can be circumstances under which the interpreted result may differ from what is actually present within the concrete or the subsurface. The Supplier's success rate in terms of successfully locating and identifying concealed objects remains high, however this still leaves the same risk. Accordingly the Supplier **does not** guarantee to locate all or any objects or interpret all test results exactly. This is standard practice for location services in Australia in co-ordination with the Australian Standard AS5488-213 Section 2.

14.18 Where concrete structures or subsurface conditions present inaccurate or difficult to interpret data this will be detailed to the Customer onsite verbally as well as submitted in the report. Paint markings on the ground in areas of concern may also serve as documentation for the presence or absence of underground services.

14.19 The results the Supplier provide should be treated as additional sources of information about the features of any area examined and without confirmation from drawings and verification by drilling or visual inspection should not be treated as conclusive. In all cases a competent person should approve each and every penetration.

- Some underground services (pvc, AC, etc.) may be un-traceable; unfortunately the Supplier cannot locate these underground services, except by DBYD offset / above ground features.
- The Supplier takes all reasonable care in locating and marking the location of underground services, however where work is to be conducted in the vicinity of the underground services so marked or in any other location identified by the Supplier. It is the responsibility of the Customer to establish the presence or absence of the service by potholing to confirm exact depth and offset.
- The Supplier shall be under no liability whatsoever, to any person for loss or damage howsoever caused from the information obtained using electronic detection methods.
- Photos of site locations and areas of concern may be taken and filed with the Supplier for the duration of the project or as long as the Supplier in its absolute discretion deems necessary.
- The Supplier always recommends the use of Vacuum Excavation or NDD to expose or prove underground services in areas of concern.

14.20 Without limiting the generality of the preceding clause, it is the Customer's responsibility when working above or near underground services or in any other area marked or identified by the Supplier, to visually locate the presence of underground services or verify the absence of underground services by hand excavation or by the use of hand augers or vacuum excavation (NDD).

14.21 Any quote provided by the Supplier to the Customer applies to work performed between 7 a.m. to 3.30 p.m. Monday to Friday and not on public holidays. If the services are supplied outside these hours, the rate charged will be in accordance with the price list.

14.22 Waiting time will be charged in accordance with the price list.

14.23 Scans and/or reports and the results and recommendations given by the Supplier are based upon information, drawings, samples and tests referred. The Supplier, its consultants and agents accept no liability for any damages, charges, costs or expenses in respect of or in relation to injury to or death of any person or damage to any property or any other loss whatsoever arising either directly or indirectly however caused which may be suffered or incurred from or in connection with works undertaken by the Supplier. Only power cables with live current can be detected, unless physical connection is available.

14.24 The Customer shall ensure that the site is clean and accessible to the Supplier. In the event that the site is not clean and accessible to the Supplier, the Customer shall indemnify the Supplier in relation to any addition costs incurred as a result thereof and shall be charged in accordance with the price list for any additional services supplied to the Customer if applicable.

14.25 Any representatives of the Customer on site are deemed to be agents of the Customer who have the capacity and authority to bind the Customer in relation to authorizing to be provided to the Customer, verbal and non-verbal variations to any existing quotes or scope of works, changes to the price list and to confirm that the services have been supplied to the satisfaction of the Customer. If the Customer does not have a representative on site, the Supplier's agent shall have the authority to determine that the services have been supplied to the satisfaction of the Customer.

14.26 Any verbal variation to the scope of works and services to be provided by the Supplier shall be charged in accordance with the price list.

14.27 If the price list does not make reference to the price of any services supplied by the Supplier to the Customer, the price of the said services shall be determined by the Supplier.

14.28 Where the Customer engages the Supplier on behalf of a third party (in this sub-clause called the Principal) then the Customer warrants to the Supplier that the Customer is authorised by the Principal to engage the Supplier on these Terms and the Customer does so on the strict understanding that the Customer and the Principal are jointly and severally liable to the Supplier under these Terms.