

Absolute Mini-Digger Services Pty Ltd – Terms & Condition of Trade

1. Definitions

1.1 "Contractor" shall mean Absolute Mini Digger Services Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Absolute Mini Digger Services 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 the Contractor to the Client.

1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.

1.4 "Goods" shall mean Goods supplied by the Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Client.

1.5 "Services" shall mean all Services supplied by the Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.6 "Price" shall mean the price payable for the Goods as agreed between the Contractor and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 (*TPA*) 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 TPA 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 instruction received by the contractor from the client for the supply of goods and/or the clients acceptance of goods supplied by the contractor shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one client has entered into this agreement, the client 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 the contractor.

3.4 The Client shall give the contractor not less than Fourteen (14) days prior written notice of any proposed change of ownership of the client's details (including but not limited to, changes in the Clients address, facsimile number, or business practice). The client shall be liable for any loss incurred by the contractor as a result of the client's failure to comply with this clause.

3.5 Goods are supplied by the contractor 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 any such order is placed on terms that purport to override these terms and conditions of trade.

3.6 The Client agrees that they shall under any circumstances approach, or correspond with, any of the Contractor's employees, sub-Contractors or any other person engaged by the Contractor and that any dealings (including any correspondence) are to be solely between the Client and the Contractor themselves.

4. Price And Payment

4.1 At the Contractor's sole discretion the Price shall be either,

- as indicated on invoices provided by the Contractor to the Client in respect of Goods supplied or
- the Contractor's current price at the date of delivery of the goods according to the Contractor's current Price list or
- the Contractor's quoted Price (subject to clause 4.2 and 4.3) which shall be binding upon

the Contractor provided that the Client shall accept the Contractor's quotation in writing within (30) days.

4.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation.

4.3 Any variation from the plan schedule of works or specifications (including but not limited to, any variation as a result of additional works required due to the hidden or unidentifiable difficulties beyond the reasonable control of the Contractor such as hard rock barriers below the surface or iron reinforcing rods in concrete) will be detailed in writing and charged for on the basis of the Contractor's quotation and will be shown as a variation on the invoice. Payment for all variations must be made in full at their time of completion.

4.4 At the Contractor's sole discretion a 50% non-refundable deposit will be required prior to any work commencing. Once any work commences the deposit becomes progress payments to cover cost of material, labour and any other requirements of the project.

4.5 At the Contractor's sole discretion:
(a) payment shall be due on delivery of the goods; or
(b) payment shall be due before delivery of the goods; or
(c) payment for approved Clients shall be made by instalments in accordance with the Contractor's payment schedule.

4.6 The Contractor may submit a detailed payment claim at intervals not less than one month for worked performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties and the value of materials delivered to the site but not installed.

4.7 Time for payment for the goods 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 upon completion.

4.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct deposit, or by any other method as agreed to between the Client and the Contractor.

4.9 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. Damages

5.1 The Contractor shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of the Contractor (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas)

6 Underground Locations

6.1 Prior to the Contractor commencing any work the client must advise the Contractor of the precise location of all underground services on the site and clearly marked the same. The underground mains & services the client must identify include, but not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Telstra pipes & cables, fibre optic cables, oil pumping mains and any other services that may be on site.

6.2 Whilst the Contractor will take care to avoid damage to any underground services the client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, cost and fines as a result of the damage to services not precisely located and notified as per clause 6.1.

7. Delivery of Goods

At the Contractor's sole discretion the cost of delivery are:

- included in the price; or
- in addition to the price

7.1 The Contractor may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.2 The Contractor shall not be liable for any

loss or damage whatever due to the failure by the Contractor to deliver the goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.

8. Title

8.1 The Contractor and Client agree that ownership of the Goods shall not pass until the client has paid the Contractor all amounts owing for the project.

8.2 Receipt by the Contractor 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 the Contractor's ownership or rights in respect of the Goods shall continue.

9. Default & Consequences

9.1 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 one half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate)

9.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fee incurred by the Contractor

9.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Contractor's from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs. the project

9.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any project of the Client which remain unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:

- any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payment as they fall due (b) the Client becomes insolvent, convenes a meeting with its creditors, or makes an assignment for the benefit of its creditors.

10 Cancellations

10.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before Goods are delivered by given written notice to the Client as notified in clause 4.4.

10.2 In the event the Client cancels the delivery of Goods or the project, the Client will be liable for any loss incurred by the Contractor (including but not limited to, any loss of profits) up to the time of cancellation.

11 General

11.1 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

11.2 The Contractor shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions.

11.2 The client agrees that the Contractor may review these terms and conditions at any time. If, following any such review, there is to be any changes to these terms and conditions, then the change will take effect from the date on which the contractor notifies the Client of such change.

11.3 Any Failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.

11.4 Any changes or alterations to any of the Contractors documents, quotations, receipts or invoices shall be a breach of the terms and conditions at which the Contractor has the right to terminate the agreement instantly with no reimbursements to the Client.