

Contractors Terms and Conditions of Trade

INTRODUCTION

For the purposes of this Agreement, "the Contractor" means Hughes Contracting Group Pty Ltd ACN 283 129 including where only the context favours the Contractor, T/As Hughes Plumbing Contractors. Ltd ABN 15 619 938 242 and/or any of its subcontractors assigned to perform Works on behalf of the Contractor; "the Customer" is the applicant named on the Contractor's Commercial Quote/Agreement, and co-jointly each director, whether or not named on the face of the Commercial Quote/Agreement. It is expressly agreed and the Customer warrants this Introduction and these terms and conditions are not to be read *contra proferentem* the Contractor.

1. DEFINITIONS AND INTERPRETATION

1.1 The following words and phrases in these general conditions of Agreement, mean the following and take the narrower or wider interpretation as favours the Contractor:

- (a) Agreement Documents means the documents listed in Annexure 3; or the Contractor's Commercial Quote/Agreement and for the construction drawings, as the case may be;
- (b) Agreement Price is the Commercial Quote/Agreement adjusted according to this Agreement;
- (c) BIF Act is the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) Bill of Quantities means;
 - (i) A list of items and materials for pricing provided by the Customer; or
 - (ii) A list of items costed in this Commercial Quote/Agreement by the Contractor.
- (e) Business Day means a day that is not: a Saturday or a Sunday; or a special holiday or public holiday in the local government locality where the Site is located.
- (f) Date for Completion is the dates stipulated in the Commercial Quote/Agreement and if no date is stipulated the date nominated by the Contractor in its discretion.
- (g) Defects are any part of the Works that are defective, incomplete, or not otherwise carried out in accordance with the Agreement;
- (h) Defects liability period means;
 - (i) The period agreed between the Contractor and the Customer if at all; or
 - (ii) The period imposed by the principal or utility as the case may be; or
 - (iii) As defined in Schedule 2 of the BIF Act.
- (i) Equipment means plant and machinery used or to be used by the Contractor in the performance of the Works or services supplied or to be supplied;
- (j) Monitor means any service locator or spotter or observer or guardian or watchman for any purpose or under any legislation, regulation, code or bylaw, whatsoever.
- (k) Notice to Remedy Breach means the notice referred to in clause 38;
- (l) Prime Cost means the direct cost of a commodity in terms of the materials and labour involved in its production, excluding fixed costs.
- (m) QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld);
- (n) Reference Date is a date or the dates calculated in accordance with the Commercial Quote/Agreement or as agreed in writing between the Contractor and Customer;
- (o) Site is the land upon which and of the address of the Customer upon which the work the subject of this Agreement is to be performed;
- (p) Special Conditions means any special conditions agreed and signed in writing and stated to amend these general conditions;
- (q) Start Date is the date stipulated in this Agreement or otherwise as agreed in writing between the Customer and the Contractor;
- (r) Variation means a change in the scope of the Works arising from:
 - (i) an addition, omission, increase, decrease or substitution of work from the Works;
 - (ii) an alteration to the specification of a material; or
 - (iii) changes in levels, dimensions, or the set out of the Works if stipulated by the Customer or requested or stipulated by its agents or requested or otherwise required by the Contractor.
- (l) Works means the whole of the work to be carried out and goods and services supplied and or completed by the Contractor in accordance with the Agreement.

1.2 Subject to clause 1.1 hereto, in this Agreement, except where the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) if a word or phrase is defined, similar words and phrases have a corresponding meaning;
- (c) a reference to:
 - (i) a person includes a corporation, unincorporated association, firm, and a government or statutory body or authority;
 - (ii) a body includes its successor;
 - (iii) a person includes its legal personal representatives, assigns and successors;
 - (iv) provisions or terms of the Agreement or another related document, Agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (v) a monetary sum is exclusive of GST unless stated otherwise; and
- (d) headings are for reference.

1.3 If any clause, provision or term of the Agreement is ultra-vires, or found to be invalid or unenforceable, such illegality, invalidity or unenforceability will not affect the legality, validity or enforceability of any other clause, provision or term of the Agreement.

2. AMBIGUITY IN AGREEMENT DOCUMENTS

2.1 Except where any interpretation would favour the Contractor, if the Contractor discovers any ambiguity, discrepancy, error or inconsistency in the Agreement Documents ('Error'), it may, by written notice, request a direction, from the Customer as to the correct interpretation, quantity or quality of the Error.

2.2 Within ten (10) Business Days after its receipt of any written notice provided by the Contractor pursuant to clause 2.1, the Customer must give to the Contractor a written direction ('the Resolution') of the Error.

2.3 In resolving any Error between the Agreement Documents, the order of precedence stipulated in Annexure 3 is to be applied.

2.4 In resolving any Error between Agreement Documents of the same precedence:

- (a) detailed drawings are to be relied to resolve any conflicting information contained in general plans, elevations and sections;
- (b) figured dimensions take precedence over scaled dimensions; and
- (c) drawings made to larger scales or those highlighting particular parts of the Works take precedence over drawings to smaller scales or made for more general purposes.

3. STANDARD OF WORKS

3.1 The parties acknowledge the obligation to comply with all relevant legislation, standards and codes including, but not limited to, the *Building Act 1975* (Qld), the BIF Act and the QBCC Act.

3.2 The Contractor must carry out and complete the Works in accordance with the Agreement:

- (a) with due expedition and in an appropriate way using all reasonable care and skill;
- (b) using only new materials, unless instructed otherwise in writing by the Customer;
- (c) in accordance with the Agreement Documents;

3.3 The Customer will endeavour to ensure that any work performed by the Customer or its other subcontractors upon which the Contractor's work is to be built or placed, or is dependent upon, has been constructed is not defective, and is suitable to the performance of the Contractor's work.

3.4 The Customer's only recourse or remedy against the defective, unsuitable, or faulty workmanship of anyone except the Contractor, lies solely with that party, its employees, contractors and agents.

4. START OF WORKS

4.1 The Contractor will start carrying out the Works on the Start Date, unless otherwise directed in writing by the Customer.

5. SUBSTANTIAL COMPLETION

5.1 Substantial Completion occurs when;

- (a) the Works are complete except for minor Defects and minor omissions; and
- (b) the Customer has given to the Contractor all guarantees, warranties, approvals and the like required by the Contractor.

6. EXTENSION OF TIME

6.1 Within seven (7) Business Days after the Contractor believes that the Works are being, or will be, delayed for any reason, it must give to the Customer a notice stating:

- (a) the cause of the delay;
- (b) the length of the delay; and
- (c) the extension, in Business Days, of the Date for Completion sought by the Contractor as a result of the delay.

6.2 The Contractor will be entitled to an extension of the Date for Completion for a delay caused by any act, default or omission directly by the Customer or the Contractor.

6.3 If the Contractor has not stipulated a Date for Completion and becomes aware that the Works that are being, or will be, delayed for any reason the Contractor must immediately stipulate a Date for Completion and utilise that date in seeking an extension of time.

7. PAYMENT AND TITLE

7.1 The Customer must pay the Contractor all amounts owing pursuant to this Agreement plus any applicable GST.

7.1.1 The Customer charges all of its/his/her real property (present or future) as security for the Customers obligations under this guarantee.

7.2 The Customer must pay the Contractor from each Reference Date, and the Contractor is entitled to give the Customer a written payment claim.

7.3 Each payment claim must be given in writing to the Customer and must include details of the value of work done up to and including the Reference Date.

7.4. Title

7.4.1 The Contractor and Customer agree that ownership of the Goods shall not pass until:

- (a) The Customer has paid the Contractor all amounts owing for the particular Goods; and
- (b) The Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer.

7.4.2 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.

7.4.3 It is further agreed that:

- (a) Until ownership of the Goods passes to the Customer in accordance with clause 7.4 that the Customer is only a bailee of the Goods and must return the Goods to the Contractor on request.
- (b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possessions of the Goods then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- (d) The Customer must not convert or process the goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- (e) The Customer irrevocably authorises the Contractor to enter any of its premises where the Contractor reasonably believe the Goods are kept and recover possessions of the Goods.
- (f) The Contractor may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Contractor.
- (h) The Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

8. DEPOSIT

- 8.1 The Contractor will require a deposit from the Customer as specified in the Commercial Quote/Agreement.
- 8.2 The Customer acknowledges the Contractor is under no obligation to start any Works as requested by the Customer until the deposit is received by the Contractor in full and when all details pertaining to Agreement are finalised.
- 8.3 In the event of default as to payment owing to the Contractor on the part of the Customer, the Contractor shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the Agreement in addition to any remedy available to the Contractor at law or in equity.

9. QUOTES

9.1 The Contractor's Commercial Quote/Agreement

The Contractor may give the Customer a Commercial Quote/Agreement specifying the Works required to be done in order to fulfil the Customer's instructions and an estimate of the Contractor's charge for the performance of such Works, subject to the Contractor's election to maintain or increase rates according to:

- (a) discretion;
- (b) prevailing industry rates; and
- (c) Prime Cost items including considerations of profit and administration costs.

9.2 Acceptance by the Customer

9.2.1 Where the Contractor has given the Customer a Commercial Quote/Agreement:

- (a) the Contractor need not start the Works until the Commercial Quote/Agreement has been accepted by the Customer;
- (b) the Customer shall accept the Commercial Quote/Agreement and authorise the Contractor to commence the Works by signing and returning a true copy of the Commercial Quote/Agreement accompanied with a purchase order number (if applicable);
- (c) the Commercial Quote/Agreement is valid for thirty (30) days only, unless an extension has been authorised by the Contractor;
- (d) acceptance of the Commercial Quote/Agreement will constitute acceptance by the Customer of these terms and conditions;
- (e) the Customer warrants that this Agreement will be accepted in the following ways:
 - (i) in writing by signing the Customer Box;
 - (ii) by payment of the Deposit by the Customer;
 - (iii) by providing card details for the Deposit to be charged to; or
 - (iv) by conduct in continuing to use and/or instructing the Contractor in the Works to be carried out; and
- (d) the Customer warrants that it has not relied on any representation by the Contractor, its employees or subcontractors other than as supplied in the Commercial Quote/Agreement.

9.2.2 The *Electronic Transactions Act 2001* (Qld):

- (a) if a Customer's signature or execution is required, the requirement is taken to have been met by an electronic communication; and
- (b) if the Contractor is required to produce a document that is in the form of paper, the requirement is taken to have been met by an electronic communication.

10. VARIATIONS

10.1 Should the Customer increase or change the scope of the Works to be provided by the Contractor, this will constitute a variation to the original Commercial Quote/Agreement and the Customer shall indemnify the Contractor from any additional cost incurred.

10.2 As a result of the Customer not making full disclosure as to its requirements, and/or the quality of the Site or any other matter outside the control of the Contractor, then the Contractor reserves the right to make an additional charge to the Customer for any additional Works in accordance with the Contractor's prevailing charges at that time at its sole discretion.

10.3 Variations including but not limited to those specified in clause 10, may be required at some point during the Works. The Customer may not always be available to approve such variations, so with time being of the essence the Contractor shall make the necessary changes to ensure continuity of the Works. Such changes will be charged to the Customer as a variation and the Customer agrees to this assertion.

10.4 At any time prior to Substantial Completion, the Customer may give to the Contractor a written direction to perform a Variation.

10.5 If the Contractor proposes a Variation, the Contractor may give to the Customer an advice in writing on:

- (a) the feasibility of the proposed Variation;
- (b) if the proposed Variation would increase any part of, or add to, the Works, the scope of work necessary to carry out and complete the proposed Variation;
- (c) the effect of the proposed Variation on the Date for Completion, if any; and
- (d) the price, exclusive of GST, for which the Contractor is prepared to carry out and complete the proposed Variation.

10.6 As early as the Contractor deems practicable, the Contractor must give to the Customer a sufficiently and specifically particularised written notice of the matter requested.

10.7 Where the Customer directs the Contractor in writing to carry out a Variation, the Agreement Price is adjusted by:

- (a) if the Customer and the Contractor have agreed a price for the Variation, that price; or
- (b) if the Customer and the Contractor have not agreed a price for the Variation, a reasonable value of the Variation, as deemed by the Contractor, including a reasonable allowance for profit, overheads and administrative costs.

10.8 The Contractor is not required to carry out a Variation unless a written direction to carry out the Variation is provided to the Contractor by the Customer, or at the Contractor's sole discretion.

11. SUSPENSION OF THE WORKS

11.1 If the Customer directs the Contractor to suspend the whole or part of the Works under clause 11.2 due to a cause outside the reasonable control of the Contractor, the Contractor is not liable for any loss or damage suffered by the Customer because of the Contractor not carrying out the Works during the period of suspension.

11.2 The Customer may direct the Contractor to suspend carrying out the whole or part of the Works:

- (a) because of an act, default or omission of the Contractor or its agents or employees;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order; or
- (d) because of suspension of work under the Customer.

12. FORCE MAJEURE

12.1 The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the failure of the Contractor to complete the Works as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary products and/or services or any other matter beyond the Contractor's control.

13. DEFECTS LIABILITY PERIOD

13.1 The Contractor must remedy any Defects prior to the expiry of the Defects Liability Period.

The Customer may, at any time prior to the expiry of the Defects Liability Period, give to the Contractor a written direction to remedy Defects within a reasonable period.

14. DAMAGE, SITE CLEANING AND REINSTATEMENT

14.1 The Contractor must ensure that the part of the Site in or on which it is carrying out work is kept reasonably clean and tidy at all times.

14.2 If the Contractor fails to keep its part of the Site reasonably clean and tidy, the Customer may give to the Contractor a written direction to clean that part of the Site within a reasonable period.

14.3 If the Contractor fails to comply with a written direction given to it in accordance with clause 14.2, the Customer may have the Contractor's part of the Site cleaned and tidied by others, and will be entitled to the costs it incurred in having the Contractor's part of the Site cleaned and tidied.

15. INSURANCE

15.1 By the Start Date, the Customer and Contractor must at each own cost affect and maintain for the duration of the Agreement any requested or applicable insurance policies.

16. INDEMNITY

16.1 Indemnification by the Customer

The Customer releases and indemnifies the Contractor and its Personnel ("Indemnified Parties") from and against all claims, actions, losses, expenses, costs or damages which may be brought or made by any person (including the Customer) against, or suffered or incurred by, the Indemnified Parties, arising directly or indirectly from:

- (a) any contravention of any Law, fraud, wilful misconduct, or unlawful or negligent act or omission by the Customer or its Personnel;
- (b) any breach of this Agreement by the Customer or its Personnel; or
- (c) any death or personal injury to any person, or any loss of or damage to any property of any person, arising in connection with this Agreement, but reduced to the extent that any liability for same is caused or contributed to by any negligent or unlawful act or omission of the Indemnified Parties.

16.2 Limitation of liability

Notwithstanding any other provision in this Agreement:

- (a) the Contractor's liability to the Customer for any claim for loss or damage made in connection with this Agreement (for contract, tort, under statute or otherwise) in respect of death, personal injury or damage to property is limited to \$10 million.
- (b) the Contractor is not liable for indirect, consequential or economic loss or damage (including liquidated damages), loss or liability that is not the direct result or the immediately identifiable consequence of the Contractor's act or omission; loss of all profits or revenue (whether direct or indirect); loss of benefit of any contract; delay damages; loss of production or production stoppage or loss of data whether such loss is direct or indirect and is not liable for any exemplary or punitive damages of any kind.

17. COPYRIGHT

17.1 The Contractor has copyright in the information pertaining to the Bill of Quantities the Contractor has prepared and which form part of the Contractor's Commercial Quote/Agreement to the Customer. The Customer must keep this information confidential to ensure it cannot be used by any other company with a business similar to that of the Contractor.

18. SITE ACCESS

18.1 The Customer shall ensure that the Contractor has clear and uninterrupted access to the Site until the Works have been completed and the Contractor paid in full.

18.2 The Customer shall indemnify the Contractor from additional costs or penalties if the completion of the Works is delayed due to interrupted Site access.

18.3 The establishment to site by the Contractor or any associated company or subcontractor, shall constitute 100% acceptance of any final price offered by the Contractor preceding establishment and excluding any error or miscalculation to the detriment of the Contractor, and shall be prima facie evidence of irrefutable acceptance of these terms and conditions.

18.4 The Contractor and its employees, subcontractors, agents, and consultants, must comply at all times with:

- (a) all requirements of, or otherwise connected or associated with, the *Work Health and Safety Act 2011* (Qld), including all directions given by the principal contractor of the Site; and
- (b) all requirements of the *Environmental Protection Act 1994* (Qld).

18.5 The Contractor understands and expressly agrees that the Customer may immediately remove any person from the Site who fails, or is reasonably suspected of failing, to comply with the applicable requirements of the *Work Health and Safety Act 2011* (Qld), the *Environmental Protection Act 1994* (Qld), or any legal requirement arising out of, or otherwise connected with, any law regulation or Code.

19. EXCAVATION IN ROCK

19.1 The Contractor reserves the right not to excavate rock which in its opinion is too difficult to excavate.

19.2 Rock which has been excavated by ripper tyne or by hydraulic rock hammer attachment or an excavator or by drilling bit, auger bit, or in any other fashion by any other device, regardless of the size or weight of the device, shall be charged at hourly rates, within the Contractor's discretion, or \$100/m³ on ripped rock and \$290/m³ on hammered rock, subject to these terms and conditions.

19.3 In all circumstances a letter of certificate, or both, from a licenced geotechnical company shall suffice as final and conclusive evidence both as to the nature and conditions of the excavation of rock. Additionally, a letter or certificate from a quantity surveyor of the Contractor nomination shall be final and conclusive evidence as to quantum. In the event of any inconsistency between the geotechnical company's letter and or certificate and the quantity surveyor's letter

and or certificate, then the geotechnical company's letter or certificate shall take precedence over the quantity surveyor only so far as to rock type, and the quantity surveyor's letter or certificate shall take precedence only in so far as to quantum.

19.4 The cost of certifying quality or quantum shall be at the Customer's expense and in the Contractor's control.

20. CONSTRUCTION TO DESIGNATED DESIGNED LEVELS

20.1 To be clear this provision operates to place the onus upon the Customer to determine and confirm in writing the exact requirement of the earthworks contractor. The design drawings have no precedence, and this is because of the tendency of Customers to vary earthworks on-site and without notice. All structures erected in the course of performing the Contractor's services are built to designed finish levels or at the discretion of the Contractor, to a level considered best. It is agreed that the Contractor is the best entity to exercise that discretion, and that the level of such work may be varied, at the cost of the Customer.

20.2 For the purposes of supplying a price, contour lines in tender drawings take precedence over spot levels in actual localities in-situ. However, the greater the existing surface level, the greater the cost which will be charged to the Customer.

20.3 Where there is no contour line, extrapolation by the Contractor will provide the appropriate value or reduced level.

20.4 For the purposes of work on site, a spot level taken by a representative of the Contractor will take precedence over a contour line or an extrapolation used for pricing purposes.

21. SURFACE FINISH

21.1 Excavated and filled areas shall be finished to the lines, levels and grades in-situ. The finished surface shall be neatly and evenly trimmed, and spoil stock piled on line.

22. COMPACTION

22.1 The Customer shall make all allowance for settlement of material, and compaction thereof. To be clear, this is so even where any unit or item in either the Commercial Quote/Agreement, plan, Bill of Quantities, or Schedule of Rates uses the word "compaction". Unless specifically allowed for, the onus is upon the customer to carry out and supply compaction density tests. The Customer accepts the risk of occasional failures of line density tests. To be clear, if the Contractor claims not to have placed the fill material in-situ, the Customer expressly accepts this because of a common tendency of earthworkers to push fill material into the excavations of others on-site.

23. EMBANKMENTS

23.1 Unless specifically allowed for in any schedule of rates forming the Agreement, any embankment which impedes the line of work by the Contractor shall be cut and battered to facilitate safe and efficient work by the Contractor. Re-instatement shall be at the Customer's cost.

24. PROVISION OF WATER

24.1 Unless otherwise provided for, the provision of water for compaction or dust suppression and density tests are excluded. The Customer may request the Contractor to supply water. This is agreed to be an order for the provision of that service. Conversely, and in its sole discretion, the Contractor may deliver to site, and utilise its own, or a hired water receptacle, at any time. For instance, if the Customer does not provide water, or provides but does not allocate specifically enough utilisation of water, or, fails to provide sufficient use of water for the Contractor to maintain its program from time to time, or, fails to provide water in a timely fashion for the effective management of the contractor's programme or works from time to time.

25. IMPORTED MATERIAL

25.1 Unless specifically provided for, any cost for imported material is to be at the cost of the Customer. To be clear, this cost shall be inclusive of profit, attendance and administration.

26. WET EXTRA OVER

26.1 A price for wet extra over in the Schedule of Rates or Bill of Quantities is hereby expressly excluded from the Commercial Quote/Agreement. To be clear, any price supplied in a Schedule of Rates or Bill of Quantities is merely the starting position. The Customer shall bear the cost of extra dewatering as priced or quoted by the Contractor from time to time, and all labour and plant costs not limited to, but including stand down, shall be borne by the Customer. To be clear, the fee shall be referable to the charge out rates for the Managing Director, the Project and Contractor Administrator, a civil engineer, or any other manager or administrator, contractor or subcontractor, tradesman, apprentice skilled and non-skilled worker as the case may be, referred to in a Schedule of Rates submitted by the Contractor, or otherwise to the Australian standard, or industry accepted rates, whichever is the higher rates. To be clear, such rate or rates are hereby expressly agreed not to be a penalty, and are expressly agreed to represent the fair market value of performing the Agreement.

26.2 Proof as to quantum and value of wet extra over costs

In all circumstances, a letter of certificate, or both, from a licenced geotechnical company shall suffice as final and conclusive evidence both as to the nature and conditions of the excavation, especially as regards to the ingress of water, and any in-situ material deleterious to the performance of the Agreement.

In all circumstances, any evidences supplied by the Contractor to the Customer such as, but not limited to, workings, drafts, memorandums of cost variations, claim assessments, sub-contractors and suppliers invoices and summaries etc., shall suffice as final and conclusive evidence of the quantum and value of those costs. Such evidences may be updated from time to time to reflect the final cost.

27. SPOIL REMOVAL

27.1 Unless otherwise provided for, it is expressly agreed that all existing spoil provided by the Customer is to be neatly stockpiled by the Customer off the line of work, and not in any way which stymies, impedes or otherwise disrupts the Contractor's program or Works.

28. TRAFFIC CONTROL MEASURES

28.1 It is expressly agreed that traffic control is a Prime Cost item. Any price supplied is to be Prime Cost plus ten percent administration plus ten percent profit.

29. SURVEY, SET OUT AND AS CONSTRUCTED DATA

29.1 Unless otherwise provided for, survey, set-out and as constructed data and drawings are specifically excluded from any Commercial Quote/Agreement provided.

30. CONTAMINATED WORK SITE

30.1 Should the Contractor discover asbestos or any other contaminants at the Site which pose a serious health risk, then the Customer shall indemnify the Contractor from any costs, losses or expenses incurred should the Contractor need to suspend the Works, until such time as licensed contractors commissioned by the Customer have cleared such contaminants from the Site.

31. GENERAL HIRE

31.1 Hire Periods

31.1.1 The daily rate is based upon the Equipment being hired for a minimum period as specified in the Contractor's current price list or job docket.

31.1.2 The hire shall commence from the time and date the Equipment leaves the premises of the Contractor.

31.1.3 Work performed on weekends, statutory or gazetted public holidays shall attract an extra charge to allow for overtime costs. Current rates are available on application.

31.2 Hire Charges

31.2.1 The Customer shall pay the Contractor on completion of the Hire Period for the following:

- (a) the rate/s specified in the Contractor's current price list or job docket;
- (b) all hiring charges and any other amounts payable in accordance with these terms and conditions within the time specified in the Commercial Quote/Agreement.
- (c) travelling time charges from depot to depot, assessed according to time and distance involved. Where applicable float charges shall also be payable by the Customer;
- (d) where the Customer is responsible for the loss or damage to the Equipment the whole or part of the cost of replacement or repair of the Equipment will be added to the invoice total; and
- (e) the amount of tolls, levies offences (traffic/parking) or like charges paid or payable by the Contractor to any Government body in respect of use of the Equipment.

32. THE HIRER'S RESPONSIBILITIES

32.1 Permits, Plans and Fees

Prior to the commencement of the hire period, the Customer must obtain all necessary permits and/or plans and pay any fees payable to any local or government authority in relation to the Works.

32.2 Damage to Services

32.2.1 During the hire period the Customer should clearly mark the exact location and identify all services above and below ground at the Site, including, but not limited to drains, pipes, sewers, mains and telephone and data cables, to enable the Contractor's equipment operator to prevent damage to all such services. These plans can be requested from the DBYD (Dial Before You Dig) website at www.1100.com.au or phone 1100.

32.2.2 During the hire period the Customer should disconnect any services, including but not limited to power, water, and gas, as requested by the Contractor.

32.2.3 Should the Customer fail to provide the Contractor with the appropriate plans for the Site as specified and/or fail to disconnect any services requested by the Contractor, the Customer shall indemnify the Contractor from any claim for costs, expenses or losses resulting from any subsequent damage.

32.3 During Hire Period

During the hire period the Customer shall:

- (a) be responsible for any loss or damage to the Equipment if such loss is caused by the negligence of the Customer or any persons under its control;
- (b) not alter, make any additions to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (c) be liable for any costs should the Equipment, as a result of instructions given by the Customer, become bogged. Costs referred to being the agreed hire and the additional hire of whatever equipment is necessary to recover the machine; and
- (d) keep all persons, including the Customer, away from the Equipment, whilst in operation.

33. 'DO AND CHARGE'

33.1 The hourly rate for 'Do and Charge' work will be specified on the Commercial Quote/Agreement at Annexure 2, but this rate may change should the Contractor experience an unforeseen problem requiring the hire of special equipment to complete the work.

33.2 Payment

The Contractor is authorised to charge to the Customer's nominated credit/debit card 'Do and Charge' work in full payment of any bill.

34. SET OFF

34.1 It is agreed that there is no right to set off under any contract, at law or in equity against the Contractor. To be clear, it is agreed that this is so even where such may appear to flow out of and or be inseparably connected with the dealings and transactions of any aspect of the Agreement. Conversely, the Contractor has the right, or may set off at any time any sum.

35. DISPUTE RESOLUTION

35.1 Nothing in this clause 35 prejudices a party's rights under the BIF Act or otherwise, to enforce payment due under this Agreement, or to seek injunctive or urgent declaratory relief.

35.2 If a dispute arises out of, or otherwise in connection with, the Agreement either party may give to the other party a written notice of dispute stating with full particulars, the details of the dispute.

35.3 Within seven (7) Business Days after a party receives a notice of dispute, the parties must confer at least once to attempt to resolve the dispute or to agree on methods of doing so.

35.4 If the dispute has not been resolved, or the parties have not agreed on methods to resolve the dispute, within fourteen (14) Business Days after a party receives a notice of dispute, either party may start proceedings in a court or Tribunal of competent jurisdiction, or for a payment dispute, in accordance with Chapter 3 of the BIF Act. It is expressly agreed that a failure to comply with clause 35 will void any claim initiated or render any such claim impotent. The party who initiated the claim will bear the other party's costs.

35.5 Notwithstanding the commencement of proceedings in accordance with clause 35.4, the parties must continue to comply with their obligations in accordance with the Agreement.

36. ADJUDICATION

36.1 The Customer acknowledges and expressly agrees that the cost of an adjudication is to be borne entirely by the Customer.

37. COUNCIL FEES, CHARGES, PERMITS ETC.

37.1 Unless otherwise provided for, at all times any City or Shire Council or utility or fees or permits remain the responsibility of the Customer, and the Contractor expressly advises that it accepts no responsibility for the payment thereof.

37.2 For the avoidance of doubt, the Customer must pay the cost of any fees, charges or permits whatsoever as and when requested by the Contractor.

38. TERMINATION

38.1 The Contractor may terminate for convenience for any reason.

38.2 If the Agreement is terminated in accordance with clause 38.1, the Contractor is entitled to give to the Customer a progress claim for the unpaid value of the Works carried out by the Contractor up to, and including, the date on which it received the Customer's written notice of termination, including for materials reasonably ordered by the Contractor which the Contractor cannot return or use elsewhere, but only if those materials will become the property of the Customer or its nominee upon payment.

38.3 The Customer may terminate this Agreement for the substantial breach of the Agreement, but not until a Notice to Remedy Breach has been hand delivered in writing to the Contractor setting out;

- (a) All of the particulars of the alleged breach;
- (b) the proposed steps to remedy the breach required by the Customer; and
- (c) providing fourteen (14) Business Days for the Contractor's response.

38.4 For the avoidance of any doubt, any termination not complying with this clause 38 is expressly agreed to be an invalid termination and a repudiation of this Agreement which provides the Contractor an option of election.

39. WORKPLACE HEALTH AND SAFETY

39.1 The Customer is the "principal contractor" for the Site within the meaning of the *Work Health and Safety Act 2011* (Qld) and the regulations in force under that Act.

39.2 The Contractor must ensure that it and its employees and agents carry out the Works safely and in accordance with the Act or other applicable legislation.

40. SERVICE LOCATION AND PROVISION OF MONITOR

40.1 Unless otherwise provided for, any and all costs for the provision of a Monitor are the Customer's responsibility.

40.2 For the avoidance of doubt, the Customer must pay to the Contractor the cost of any letter, certificate or report whatsoever as and when requested by the Contractor.

41. EXCLUSION OF COSTS

41.1 For the avoidance of doubt, any cost which has not been expressly provided for in this Customer Quote/Agreement is a cost of the Customer including, but not limited to:

- (a) matters which in the Contractor's opinion alone, were not reasonably foreseeable; or
- (b) were in the Contractor's opinion not matters to which a Contractor experienced in Works of the sort undertaken would not be aware; and
- (c) the cost of stand down or stand by instructions or events will be charged to the Customer according to the 'Do and Charge Rates' at Annexure 2, or the otherwise with reference to them.

42. ACCEPTANCE OF WORKS

42.1 In the event of any dispute as to the quality, quantum, specification, rule or requirement; the dispute shall be resolved on a letter or certificate or report, from a consultant of the Contractor's election, affirming the Contractor's position.

42.2 The election of the consultant shall be solely at the Contractor's discretion and choice.

42.3 The cost of any letter, certificate, or report shall be at the Customer's expense.

43. WAIVER

43.1 No provision or term of the Agreement may be waived, varied, discharged, or released by a party unless such waiver, variation, discharge, or release is evidenced in writing.

44. BLOCKED DRAIN

44.1 The Customer acknowledges and agrees that the presence of plant/ tree root growth and/ or blockages generally indicates damaged pipes. Accordingly, the Customer agrees that these pipes cannot be fixed by simply removing plant/ tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.

44.2 In the event that any of the Contractor's equipment becomes lodged in the Customer's faulty drain the Customer will be liable for all costs incurred by the Contractor in retrieving and/or repairing the equipment.

45. UNDERGROUND LOCATIONS

45.1 Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electronic services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

45.2 Whilst the Contractor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Contractor in respect of all and any liability claims, loss, damages, costs and fines as a result of damage to services not precisely located and notified as per clause 45.1.

46. SURPLUS

46.1 Unless otherwise stated elsewhere in this contract:

- (a) Demolished Goods remain the Customer's property; and
- (b) Goods which the Contractor brings to the site which are surplus remain the property of the Contractor.

47. PHOTOGRAPHY AND SOCIAL MEDIA

47.1 The Customer expressly grants the Contractor, its subsidiaries and affiliated companies, and their respective successors and assigns (collectively, the "Permitted Parties") to unlimited, perpetual, fully sub-licensable, royalty-free, worldwide license and the right/s and permission/s to use its name and/ or handle, image/s,

photograph/s and video/s posted to a social media platform, but Including but not limited to Twitter, Facebook, LinkedIn and Instagram.

47.2 The Customer expressly grants the Contractor permission to take photos, videos, and any form of audio and visuals of construction or services provided on its property.

47.3 The Customer agrees that the Content may be used, copied, distributed, published, exhibited, digitised, publicly displayed, reproduced, altered, edited, manipulated, and otherwise used via any medium and by whatever means, in whole or in part, anywhere in the world, at any time, for an unlimited number of projects, for any and all purposes of advertising, marketing or trade in promoting and publicising the Permitted Parties.

48. GENERAL RESPONSIBILITIES

48.1 The Customer shall:

- (a) promptly review all information and documentation submitted by the Contractor, and inform the Contractor of any Directions, in a timely manner for the orderly progress of Works;
- (b) obtain all required consents, approvals and licences and permits from any Authority;
- (c) arrange and make provision for the Contractor entry and access to the Site (including, but not limited to, obtaining any necessary licence or approval for such purposes) in connection with the performance of the Works;
- (d) where required, provide safe accommodation, transport and meals (to the standards usually provided at Australian sites similar to the Site) when required for all the Contractors Personnel;
- (e) ensure that all information and documents provided by the Customer to the Contractor are complete and accurate, and immediately notify the Contractor of any inaccuracies in the information or documents supplied promptly on becoming aware of same;
- (f) immediately notify the Contractor whenever the Customer, or the Customer's Representative, becomes aware of a defect or deficiency in any information or documentation submitted by the Contractor or the work performed by the Contractor in connection with the Works;
- (g) comply with all relevant industrial relations requirements, relevant Australian Standards, Work Health & Safety (WHS) Laws and Codes of Practice and Environmental Laws and Codes of Practice, original equipment manufacturer's manuals the Contractors operating instructions (where applicable);
- (h) notify the Contractor immediately should it become aware of any constraint which may hinder the Contractor's execution of the Works on Site;
- (i) notify the Contractor immediately of any dangerous or potentially dangerous conditions on the Site (including the identification of any hazardous materials)
- (j) notify the Contractor promptly of any fault, breakage or damage to any Equipment or other materials owned by the Contractor;
- (k) notify the Contractor of any incident including any significant injury to any persons and/or any significant Environmental damage on or near the Site;
- (l) notify the applicable WHS and Environmental Authorities of all notifiable incidents within prescribed time frames and notify the Contractor of any order received from any such Authorities (including prohibition and improvement notices);
- (m) ensure that the Customer's plant, equipment, tools, services and other items (where used in connection with the Works) are properly maintained and/or repaired such that they are available to operate or be used in an efficient, effective and safe manner at all times throughout the duration of the Project. the Contractor shall accept no responsibility for any loss or damage to the Customer's owned items referred to herein.

49. APPLICATION OF PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- (a) The Contractor may register any actual or impending purchase money security interest (PMSI) under the PPSA in respect of all Equipment.
- (b) The Customer must not part with possession of the Equipment or enter into any hire arrangement with any third party without the written consent of the Contractor. If the Customer hires the Equipment to any third party, the Customer agrees that it will protect the Contractor interests in the Equipment by registering a security interest itself (if possible), or by assigning, by this clause, to the Contractor all rights as bailor, to enforce against the third party.
- (c) The Customer has an obligation to give the Contractor notice if another party with a Security Interest in the Equipment seizes or otherwise deals with the Contractor PMSI in the Equipment. If the Customer grants any Security Interest in the Equipment to another party, that other party must acknowledge the priority of the Contractor PMSI.
- (d) The parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or to any other person requested by an interested person. Each party waives its rights to receive any verification statement and any other notices that may be required or desirable under the PPSA to the extent permitted at law.

50. ENTIRE AGREEMENT

50.1 The Agreement embodies the entire Agreement entered into between the parties and supersedes all previous agreements between them relating to the subject matter of the Agreement.

51. ASSIGNMENT

51.1 The Contractor may assign its rights or obligations under the Agreement without the prior consent of the Customer.

52. PRIVACY

52.1 The Contractor will comply with the Australian Privacy Principles in all dealings with the Customer. A copy of the Contractor's Privacy Statement is available upon request or by visiting <https://hughespc.com.au/>

52.2 The Customer expressly agrees that the imitation of damages for any breach is AUD\$1000.