

1. Definitions

'Australian Consumer Law' means Schedules 1 and 2 and any other relevant provisions of the *Competition and Consumer Act 2010* (Cth).

Business Day has the meaning given in the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Client means the customer named on the quotation, or if no customer is named, the party engaging, or proposing to engage, Locaters, either orally or in writing, or to whom Locaters provides the Goods or Services.

Conditions means these standard terms & conditions of trade (which include any attachment), including any written quotation that has been provided by Locaters.

Consumer has the meaning in the Australian Consumer Law.

Goods means tangible goods, items, parts, materials, products or benefits supplied or to be supplied by Locaters to the Client.

Locaters means Locaters Pty Ltd (ABN 76 086 300 736).

Personnel means the officers, employees, agents, consultants, contractors and subcontractors of a party (but in the case of the Client does not include Locaters).

PPSA means means the *Personal Property Securities Act 2009* (Cth).

Services means design, work, intangible goods, products or benefits supplied or to be supplied by Locaters to the Client.

Site means the location or locations for the delivery of the Goods or performance of the Services by Locaters for the Client, other than the premises of Locaters.

2. Agreement

- a. By engaging Locaters to perform any Services or supply any Goods, the Client is deemed to accept these Conditions (including any associated costs and charges).
- b. Where a written quotation has been provided by Locaters, it is an offer open for acceptance within 30 days of the date of the quotation. The Client's written notice or receipt of the Goods or Services from Locaters constitutes acceptance of the offer. Upon acceptance, a binding contract shall be created between the Client and Locaters based solely on the terms detailed in the Conditions.
 - i. No change in the terms of the Conditions shall be effective unless agreed in writing by each party.
 - ii. The waiver or breach by a party of any term of the Conditions shall not constitute a waiver or breach of any other term.
 - iii. In the event of any conflict, inconsistency or ambiguity between the quotation and these standard terms and conditions of trade, the standard terms and conditions of trade will prevail.
- c. In the absence of a written agreement between the Client and Locaters detailing a fixed scope of work and a fixed price for the provision of Goods and/or Services by Locaters, the Client must pay Locaters on a "do and charge" basis.
 - i. The charge and rates for "do and charge" works will generally be detailed on Locaters' Rates Document which is available upon request. The act of signing such Rates Document by the Client or its Personnel constitutes acceptance by the Client of the relevant charges and rates and these Conditions.
 - ii. The charges and rates for Goods and Services provided by Locaters on a "do and charge" basis may be varied by Locaters from time-to-time by giving 10 days' written notice to the Client. By placing an order after receipt of such notice, the Client is deemed to accept the varied charges and rates.
 - iii. For the avoidance of doubt, inductions, site meetings and work prestart and will be paid on a "do and charge" basis.
- d. These Conditions will apply to all future transactions between Locaters and the Client in relation to the sale and purchase of Goods and Services, whether or not this document is delivered or executed in the course of the transaction.
- e. These Conditions (and if applicable the credit application completed by the Client and credit guarantees) contain the entire

understanding between Locaters and the Client in connection with the Goods or Services and, unless expressly stated otherwise in these Conditions, supersede and prevail over any other agreement, representation, tender or quote. For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Client (including any purchase order or like document from the Client) shall apply to or form part of the contract, except and to the extent otherwise expressly agreed in writing in these Conditions.

- f. If any provision of these Conditions is invalid, void or unenforceable, all other provisions which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.
- g. The proper law of any contract for supply of goods or services by Locaters shall be the law applicable in the State of New South Wales and the Client agrees to submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales..
- h. No rule of construction applies against a party merely on the basis it party prepared these Conditions or would otherwise benefit from them.
- i. In these Conditions, "including" and similar expressions are not words of limitation.

3. Estimates & Quotations

- a. All prices quoted by Locaters are exclusive of GST (Goods and Services Tax) or any payment that may be required to any statutory body unless otherwise expressly stated.
 - b. All prices quoted by Locaters are based on the work associated with the quotation being performed during times of ordinary rates of pay for labour and on the basis of a 38 hour week unless otherwise stated. Work required by the Client to be performed outside of these hours shall entitle Locaters to a variation under clause 6 unless otherwise stated.
 - c. Not used.
 - d. All prices quoted by Locaters and detailed as "Quote" or "Estimate" or similar wording are best estimates only and do not constitute a fixed price offer.
 - e. Not used.
 - f. The Client must provide Locaters with all information reasonably required to supply and deliver the Goods and Services, including known or suspected obstacles, hazards, peculiarities, steep gradients, contamination, asbestos, toxic substances, subsurface conditions and underground services existing at the Site. Locaters is entitled to rely on such information, documents and other particulars as are provided by the Client pursuant to, or in connection with, these Conditions.
 - g. All prices quoted by Locaters are conditional upon the Site being free from contamination, asbestos and other toxic substances and should any be encountered the Client bears full responsibility and cost for the remediation of the Site, any related risks and compliance with clause 4.c and Locaters will be entitled to a variation under clause 6.
 - h. All prices quoted by Locaters are based on the Client providing, identifying and marking all necessary survey and datum points.
 - i. All prices quoted by Locaters involving excavation, trenching, backfill and the like do not make allowance for encountering rock, shale or water nor for any specific compaction other than free fill by gravity. Locaters will be entitled to any a variation under clause 6 if it performs works in connection with identifying, breaking, removing, transporting and/or disposing of rock, shale or water and/or compaction to levels other than free fill by gravity.
 - j. All prices quoted by Locaters are based on Locaters being permitted to carry out any excavation work by machine. If the Client requires that Locaters perform excavation work by hand then Locaters shall be entitled to a variation under clause 6.
- ## 4. Work Schedule
- a. If not previously proposed by the Client, then at the time of acceptance of a quotation provided by Locaters the Client shall submit to Locaters

the proposed work schedule for the execution of the work detailed in the quotation. If Locaters agrees to the work schedule then it shall use reasonable endeavours to perform the work in accordance with that work schedule. If a work schedule is not submitted or agreed upon, then Locaters shall complete the work detailed in the quotation in a time which is reasonable in all circumstances.

- b. The Client must provide sufficient, safe and suitable possession and access to the Site for Locaters, its Personnel, vehicles and equipment to complete the works associated with the quotation in a clear and unimpeded manner without risk to health and safety as required by the work schedule and at other times notified by Locaters.
- c. If all work associated with a quotation provided by Locaters is not completed within six months from the date of the quotation then the agreed price will be increased to account for any rise in the actual costs to Locaters of materials, labour, or overhead, provided that Locaters produces reasonable documentation to confirm the price increase.

5. Delay

- a. If Locaters is delayed in delivering the Goods and/or performing the Services by any cause beyond its control (including inclement weather or its effects; unforeseen site conditions; acts of God; epidemic or pandemic; war; strikes, lockouts or other industrial disturbances; fire; flood; lightning; explosion; acts, restrictions, regulations or orders of any Government or statutory authority; changes in legislative requirements; variations; or delays caused by the Client, its Personnel or any other person, company or authority) then Locaters' obligation to deliver the Goods and/or perform the Services will be suspended for as long as such cause for delay exists and, to the maximum extent permitted by law, Locaters will have no liability in connection with such delay.
- b. If any such delay detailed in Clause 5.a persists for six months or more, then either party may by notice in writing to the other terminate the associated contract for the work. The termination of such contract shall not affect the rights and obligations of either party that accrued prior to such termination. Upon such termination, Locaters will be entitled to payment for any Goods delivered or Services performed prior to termination, and any costs reasonably incurred in demobilising or in anticipation of performing its obligations under the contract (including costs of items, materials or equipment ordered or produced).

6. Variations

- a. Where a written quotation has been provided by Locaters and accepted by the Client, Locaters is not obliged to carry out any variation to the works detailed in that written quotation.
- b. If the Client requests to vary any conditions of a quotation after accepting it (including design, nature, extent, location, hours of work or site access) and Locaters agrees to perform the variation, the parties will seek to agree a price for the variation in writing. Failing agreement, or if any other event occurs or conditions are encountered that are stated by these Conditions to entitle Locaters to a variation, then Locaters will determine the reasonable price of the variation and it will be added to or deducted from the price of the Goods and Services. To the maximum extent permitted by law, Locaters will have no liability in connection with any delay to the delivery of the Goods and/or performance of the Services caused by the variation.
- c. If Locaters is required to pay its employees any additional rates or sums due to conditions associated with the Site (such as site allowance, redundancy provisions and the like) then it shall be entitled to vary the agreed price to take into account any additional costs incurred.
- d. Where extra cost in labour, materials or overheads is incurred by Locaters by virtue of acceleration of the agreed work schedule or due to the presence of obstacles or conditions on, above or below the Site that could not have reasonably been anticipated by Locaters then Locaters shall be entitled to vary the agreed price to take into account such conditions.

7. Not used

8. Not used.

9. Risk & Title

- a. Title and legal and equitable property in any Goods sold, delivered or installed by Locaters shall pass to the Client only upon payment in full in accordance with these Conditions.
- b. Locaters shall be entitled to an unpaid vendor's lien on any Goods until payment in full is received in accordance with these Conditions.
- c. Any Goods supplied by Locaters to the Client shall be at the Client's sole risk immediately upon their delivery to the Client.

10. PPSA

- a. For the purpose of this clause, any terms have the same meaning as they do under the *Personal Property Security Act 2009* (Cth) (**PPSA Act**) and associated regulations, as amended from time to time.
- b. If the Company determines that this Agreement or the Works give rise to a security interest in respect of which the Company is the security holder, then the Subcontractor must promptly provide all assistance and cooperation requested by the Company to:
 - i. register and maintain the registration of the security interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the security interest;
 - ii. ensure that the Company' security interest is enforceable against third parties, perfected and otherwise effective;
 - iii. ensure that the security interest has the priority required by the Company (including where applicable as a purchase money security interest);
 - iv. ensure that any security interest granted temporary perfection under the PPS Act is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection; and
 - v. enable the Company to register financing statements or financing change statements under the PPS Act with respect to any such security interest.
 - vi. The Subcontractor waives the right to receive notice of a verification statement in relation to the registration of any security interest by the Company.
- c. The Subcontractor must:
 - i. not register or permit to be registered any security interest in respect of the same collateral as a security interest registered by the Company (other than one that has been consented to or granted by the Company);
 - ii. not cause or allow any of the Subcontractor's personal property to become an accession to the Company' personal property or cause or allow the Company' personal property to become an accession to the Subcontractor's personal property without the prior consent of the Company; and
 - iii. notify the Company if any other person claims or attempts to enforce a security interest in the Company's personal property.
- d. If Chapter 4 of the PPSA applies to the enforcement of the Security Interest, to the extent permitted by law, the Subcontractor agrees that sections 95, 96, 121(4), 125, 130, 132(3)(D), 132 (4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- e. The parties agree that this instrument shall not be disclosed pursuant to clause 275 of the PPS Act, except to the extent disclosure is compelled by law.

11. Payment

- a. Locaters shall submit progress claims at the times or stages specified in Locaters' quotation (or if no time or stage is specified, as otherwise nominated by Locaters) in respect of work completed for the Client (including variations) and any unfixated materials and/or Goods stored by Locaters which are intended for supply and/or installation as part of work performed by Locaters for the Client.

- b. The Client must pay Locaters' progress claims within 20 Business Days of receipt, without set-off or deduction.
- c. Interest at the rate of 10% per annum will be payable on payments which are not paid by the Client when due.
- d. The Client must reimburse Locaters, as a debt immediately due and payable, for any debt recovery costs incurred by Locaters in respect of any amount owing but unpaid under these Conditions (including legal costs on a solicitor/client basis).
- e. Notwithstanding anything else in these Conditions, if the Client has any liability to pay the Goods and Services Tax (GST) on any Goods or Services, the Client shall pay to Locaters the amount of such GST at the same time as amounts otherwise payable to Locaters.

12. Warranties

- a. Nothing in these Conditions will be read to exclude, restrict or modify any condition, warranty, right or remedy implied by law (including under the Australian Consumer Law) which cannot by law be excluded, restricted or modified.
- b. Subject to clause 12.a, Locaters warrants all Services against defective workmanship and Goods against defective materials for a period of 90 days commencing upon the earliest of:
 - i. the completion of the work; or
 - ii. the completion of an identifiable and relative portion of the associated work; or
 - iii. receipt of the Goods by the Client or delivery of the Goods to the Site where the contract is for supply only.
- c. If the Client notifies Locaters in writing of any defect in the Goods or Services during the warranty period set out in clause 12.b, Locaters will, within a reasonable time having regard to the nature and extent of the defect, at its discretion repair or replace the defective Goods or Services.
- d. Subject to clause 12.a, any warranty will not apply to, and Locaters will not be liable for, defects in the Goods or Services to the extent caused by:
 - i. any act or omission of the Client or its Personnel that is not authorised by these Conditions;
 - ii. any act or omission of third parties, including work or services performed by other suppliers or contractors;
 - iii. installation, commissioning, alteration or modification to any Goods, Services or associated work by any party other than the employees or authorised agents of Locaters; or
 - iv. failure to sufficiently maintain any Goods, Services or associated work, including failure to comply with any information or recommendations of Locaters or the manufacturer of the Goods; or
 - v. misuse or use in any manner other than that intended of any Goods, Services or associated work; and
 - vi. fair wear and tear.
- e. Subject to clause 12.a, the warranties expressly set out in these Conditions are the sole and exclusive warranties given by Locaters in connection with the Goods, Services and contract and, to the maximum extent permitted by law:
 - i. all conditions, warranties, guarantees, terms or obligations which might otherwise be implied by any law, custom, fact or otherwise in connection with the contract, Goods or Services are excluded; and
 - ii. without limiting the generality of the foregoing, Locaters gives no condition, warranty or guarantee as to the suitability, performance or fitness of the Goods or Services for any use or purpose, and the description of the Goods or Services in any document shall not import any such condition, warranty or guarantee.

13. Liability

- a. If the Client is a Consumer and any of the goods or services supplied by Locaters are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a failure to comply with a consumer guarantee under the Australian Consumer Law (other than under sections 51, 52 or 53) in relation to that those goods or services is limited to, at the option of Locaters, in the case of goods:

- i. the replacement of the goods or the supply of equivalent goods;
- ii. the repair of the goods;
- iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; and/or
- iv. the payment of the cost of having the goods repaired, and in the case of services:
 - v. the supplying of the services again; or
 - vi. the payment of the cost of having the services supplied again.
- b. If the Client is not a Consumer, to the maximum extent permitted by law:
 - i. Locaters' total aggregate liability in all circumstances (whether arising under the law of contract, in tort (including negligence), equity, debt, by warranty, under statute, or any other basis) is limited to the amount paid by the Client for the Goods and Services; and
 - ii. Locaters will not be liable in any circumstances for any loss of revenue, loss of profit, increased financing costs, loss of use, loss of business or business interruption, loss of production, loss of expected saving or loss of opportunity, or for any consequential, special, indirect, punitive, exemplary or remote loss or damage whether arising under the law of contract, in tort (including negligence), equity, debt, by warranty, under statute, or any other basis.

14. Indemnity

- a. The Client must indemnify and make good Locaters against all costs (including legal costs on the indemnity basis), losses, damages, claims, demands, expenses and liabilities in connection with:
 - i. any breach of these Conditions by the Client;
 - ii. any wilful default or negligent act or omission by the Client or its Personnel; and
 - iii. death, personal injury, or loss of or damage to property (including the Goods) in connection with any act or omission of the Client or its Personnel.
- b. Any indemnity given by the Client under these Conditions is reduced to the extent that the relevant cost, loss, damage, claim, demand, expense or liability was caused by any breach of these Conditions, wilful default or negligence of Locaters or its duly authorised employees or agents.

15. Insurance

- a. Not used.
- b. The Client must effect and maintain those policies of insurance that would be held by a reasonably prudent customer in the position of the Client, including public and product liability insurance which must:
 - i. provide cover for at least \$20,000,000 for each claim or incident on an occurrence basis; and
 - ii. cover any liability to a third party for the death of, or injury to, any person or damage to or loss of any property as a result of any act or omission of the Client or its Personnel.

16. Intellectual Property

- a. Locaters retains the rights to, and ownership of, any existing intellectual property of Locaters and any intellectual property developed during or arising from the performance of the Services or supply of the Goods unless otherwise expressly stated in these Conditions.
- b. Locaters shall grant the Client a licence to use the data it provides in connection with the project, conditional upon the following:
 - i. the licence applies only to the project to which the data relates;
 - ii. Locaters has completed the particular stage or stages of the project for which Locaters has been commissioned; and
 - iii. all fees properly due to Locaters have been paid..

17. Assignment and Subletting

- a. The Client shall not assign the contract in whole or in part without the prior written approval of Locaters.
- b. The Client acknowledges and agrees that Locaters may subcontract any or all of the work without prior notice to or approval of the Client.

18. Default

- a. If the Client commits a substantial breach of these Conditions (including any failure to observe the terms of payment), Locaters may:
 - i. immediately suspend any work for the Client; and/or
 - ii. if the Client fails to remedy that breach within 10 Business Days of receipt of written notice from Locaters, terminate the contract with the Client and repossess any Goods or unfixed portions of any work for which the Client has not paid.
- b. The Client may terminate the contract if Locaters commits a substantial breach of these Conditions and fails to remedy that breach within 10 Business Days of receipt of written notice from the Client.
- c. Subject to and limited by Chapter 5 of the *Corporations Act 2001* (Cth), either party may terminate the contract if the other enters into an agreement or an arrangement with its creditors, or being an individual commits an act of bankruptcy or is made bankrupt, or being a company resolves or is ordered to be wound up or has a liquidator, receiver, receiver and manager, official manager or administrator appointed for any or all of its assets.

19. Cancellation

- a. If the Client requests cancellation of a contract between it and Locaters or if it requests cancellation of any work being performed for it by Locaters then the Client must pay Locaters:
 - i. for any Goods delivered or Services performed prior to cancellation;
 - ii. any costs reasonably incurred (including costs of items, materials or equipment ordered or produced) in anticipation of performing its obligations under the contract; and
 - iii. a sum of 20% of the agreed price of the total work for lost profit, overheads, inconvenience and lost opportunity.

20. DISPUTES

- a. Any dispute or disagreement (**Dispute**) between the parties may be notified by a Party to the other Party and the Parties shall:
 - i. within 5 working days of notification of the dispute, meet to negotiate, in good faith, resolution of the Dispute; and
 - ii. if negotiation fails to achieve a resolution of the Dispute within 10 working days of that meeting, attend mediation, administered in accordance with procedures as set out by the Resolution Institute of Australia; despite that
 - iii. this provision does not prevent Locaters from instituting legal or other action at any time to recover moneys owing by the Client to Locaters and the Client is liable to Locaters for all and any costs of doing so.

21. Non-solicitation

- a. The Client agrees that during the term of this Agreement, and for a period of not less than 24 months after the later of Goods being provided or Services being performed under this Agreement, it shall not solely or jointly or with any other person or company, whether directly or indirectly as principal, agent, employee, shareholder, director, partner, consultant or otherwise canvass, solicit, deal with or endeavour to entice away from Locaters any Personnel, employee, agent or subcontractor of Locaters.