

## 1. DEFINITIONS

- 1.1 "JB Trenchless" shall mean JB Trenchless Pty Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from JB Trenchless.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by JB Trenchless to the Customer; and
  - 1.3.2 all Goods supplied by JB Trenchless to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by JB Trenchless; and
  - 1.3.4 all Goods supplied by JB Trenchless and further identified in any invoice issued by JB Trenchless to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Goods that are marked as having been supplied by JB Trenchless or that are stored by the Customer in a manner that enables them to be identified as having been supplied by JB Trenchless; and
  - 1.3.6 all of the Customer's present and after-acquired Goods that JB Trenchless has performed work on or to or in which goods or materials supplied or financed by JB Trenchless have been attached or incorporated.
  - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services, and advice provided by JB Trenchless to the Customer and shall include without limitation the design, manufacture, supply, installation, servicing, and repair of construction (including directional drills) and earthmoving equipment and all advice and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by JB Trenchless to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between JB Trenchless and the Customer and includes all disbursements e.g., charges JB Trenchless pays to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by JB Trenchless from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises JB Trenchless to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by JB Trenchless to any other party.
- 3.2 The Customer authorises JB Trenchless to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person, the authorities under clauses 3.1 and 3.2 are authorities or consents for the purpose of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally, the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by JB Trenchless at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of JB Trenchless between the date of the contract and delivery of the Goods and Services.

## 5. PAYMENT

- 5.1 Full payment for Goods is due prior to dispatch unless as agreed under a separate Trading Credit Account agreement.
- 5.2 Payment for Goods and Services shall be made in full on or before the 30th day of the month following the date of the invoice ("the due date").

5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

5.4 Any expenses, disbursements, and legal costs incurred by JB Trenchless in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5.6 A deposit may be required.

### 6. QUOTATION

6.1 Where a quotation is given by JB Trenchless for Goods and Services:

6.1.1 Unless otherwise agreed, the quotation shall be valid for thirty (30) days from the date of issue; and

6.1.2 The quotation shall be exclusive of goods and services tax and shipping and handling charges unless specifically stated to the contrary.

6.1.3 JB Trenchless reserves the right to amend the quotation at any time prior to acceptance of the Customer's order for the goods.

6.2 Where Goods and Services are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Goods and Services.

### 7. RISK

7.1 The Goods and Services remain at JB Trenchless's risk until delivery to the Customer.

7.2 Delivery of Goods and Services shall be deemed complete when JB Trenchless gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer. The customer shall raise no claims for loss or damage to goods delivered to unattended sites by arrangement.

7.3 The time agreed for delivery shall not be an essential term of this contract.

### 8. AGENCY

8.1 The Customer authorises JB Trenchless to contract either as principal or agent for the provision of Goods and Services that are the matter of this contract.

8.2 Where JB Trenchless enters into a contract of the type referred to in clause 8.1, it shall be read with and form part of this agreement, and the Customer agrees to pay any amounts due under that contract.

### 9. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

9.1 In this clause, financing statement, financing change statement, security agreement, and security interest have the meanings given to them by the PPSA.

9.2 Upon assenting to these terms and conditions in writing, the customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods that have previously been supplied and that will be supplied in the future by JB Trenchless to the customer.

9.3 The customer undertakes to:

a) Promptly sign any further documents and/or provide any further information (such information to be complete, accurate, and up to date in all respects) which JB Trenchless may reasonably require to:

i. Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register

ii. Register any other document required to be registered by the PPSA, or

iii. Correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii).

b) Indemnify, and upon demand, reimburse JB Trenchless for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby.

- c) Not register, or permit to be registered, a financing statement or financing change statement in relation to the goods in favour of a third party without the prior written consent of JB Trenchless.
- d) Not register a financing change statement in respect of a security interest without the prior written consent of JB Trenchless.
- e) Immediately advise JB Trenchless of any material change of its business practices of selling the goods which would result in a change in the nature of proceeds received from the nature of such sales.

9.4 JB Trenchless and the Customer agree that sections 96, 115, and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

9.5 The customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), and 132(4) of the PPSA.

9.6 The Customer waives their rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise agreed to in writing by JB Trenchless, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 The Customer must unconditionally ratify any actions taken by JB Trenchless under clauses 9.3 and 9.5.

9.9 Subject to any express provision to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out any provision of the PPSA.

### 10. OWNERSHIP OF GOODS

10.1 The property in the goods will not pass to the Customer until payment in full for all amounts due to JB Trenchless has been received. If the Customer fails to pay monies owed to JB Trenchless when due, JB Trenchless may without notice and without prejudice to any of its rights and remedies under these terms and conditions, enter any premises where JB Trenchless believes the goods are kept and recover possession of the goods and resell the goods and apply the proceeds in reduction of any indebtedness the Customer owes to JB Trenchless.

### 11. DEFAULT

11.1 The following shall constitute defaults by the Customer:

11.1.1 Non-payment of any sum by the due date.

11.1.2 The Customer intimates that it will not pay any sum by the due date.

11.1.3 Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.

11.1.4 Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to JB Trenchless remains unpaid.

11.1.5 The Customer is bankrupted or put into liquidation, or a receiver is appointed to any of the Customer's assets,

11.1.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

11.1.7 Any material adverse change in the financial position of the Customer.

### 12. SECURITY INTEREST FOR SERVICE PROVIDERS

12.1 The Customer gives JB Trenchless a security interest in all of the Customer's present and after-acquired property that JB Trenchless has performed services on or to or in which goods or materials supplied or financed by JB Trenchless have been attached or incorporated.

### 13. PAYMENT ALLOCATION

13.1 JB Trenchless may, in its discretion, allocate any payment received from the Customer towards any invoice that JB Trenchless determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payment previously received and allocated. In the absence of any payment allocation by JB Trenchless, payment shall be deemed to be allocated in such a manner as preserves the maximum value of JB Trenchless' purchase money security interest in the Goods and Services.

### 14. GENERAL LIEN

14.1 The Customer agrees that JB Trenchless may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of JB Trenchless for all sums outstanding under this contract or any other contract to which the Customer and JB Trenchless are parties.

14.2 If the lien is not satisfied within seven (7) days of the due date, JB Trenchless may, having given notice of the lien, at its option either:

14.2.1 Remove such Goods and Services and store them in such a place and in such a manner as JB Trenchless shall think fit and proper and at the risk and expense of the Customer; or

14.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds towards discharge of the lien and costs of sale without being liable to any person for damage caused.

### 15. CANCELLATION AND RETURN OF GOODS

15.1 Cancellation of any order is subject to recovery of all costs incurred to the time of cancellation, including, but not limited to, materials, labour, and factory overhead. Special Engineered products are non-returnable unless under specific agreement with JB Trenchless.

15.2 No claim relating to Goods and Services supplied will be considered unless made within seven (7) days of delivery/supply.

15.3 Goods will only be accepted for return at the sole discretion of JB Trenchless and a restocking fee of 15% may apply.

### 16. LIABILITY

16.1 Except as otherwise provided, JB Trenchless shall not be liable for:

16.1.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by JB Trenchless to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by JB Trenchless to the Customer; and

16.1.2 The Customer shall indemnify JB Trenchless against all claims and loss of any kind whatsoever, however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of JB Trenchless or otherwise, brought by any person in connection with any matter, act, omission, or error by JB Trenchless its agent or employees in connection with Goods and Services.

16.2 If, contrary to the disclaimer of liability contained in these terms and conditions of trade, JB Trenchless is deemed liable to the Customer following and arising from the supply of Goods and Services by JB Trenchless to the Customer, then it is agreed between JB Trenchless and the Customer that such liability is limited to the amount paid by the Customer for the Goods and Services.

### 17. WARRANTY

17.1 JB Trenchless warrants its products to perform to published specifications for a period of 12 months after delivery. JB Trenchless will repair, replace, or reimburse at its option, goods that a JB Trenchless inspection reveals to be defective in material or original workmanship. JB Trenchless does not warrant that its products will perform any particular task.

### 18. TITLE TO GOODS

18.1 Notwithstanding anything to the contrary express or implied, property in the goods shall remain with JB Trenchless and shall remain with the JB Trenchless and shall not pass to the Customer until JB Trenchless has received payment in full for the goods and the Customer has discharged in full all its accounts with JB Trenchless.

18.2 If payment is made by the Customer by way of cheque, ownership shall not pass to the Customer until the cheque has been honoured.

18.3 In the event that the Customer fails to pay JB Trenchless for the goods by the due date required for

payment under JB Trenchless's terms of trade, the Customer (without prejudice to JB Trenchless's rights as an unpaid Creditor or any of its other rights and remedies to retake possession of JB Trenchless's goods from the Purchaser) hereby agrees to deliver up the goods to JB Trenchless upon demand by JB Trenchless and consents to JB Trenchless retaking possession of the goods which remain unpaid.

18.4 The parties acknowledge that by supplying or accepting goods on the terms herein specified, it is not intended to create a charge, mortgage or other security interest over any of the goods supplied.

### **19. CERTIFICATE**

19.1 A Certificate signed by an officer of JB Trenchless will be prima facie evidence of the Customer's liability to JB Trenchless at the date of the Certificate.

### **20. JURISDICTION**

20.1 The proper law of all contracts arising between JB Trenchless and the Customer is the law of the State of Victoria and the parties agree that all claims and disputes relating to the goods sold shall be determined in the Court of competent jurisdiction nearest Melbourne.

### **21. COPYRIGHT AND INTELLECTUAL PROPERTY**

21.1 JB Trenchless owns and has copyright in all designs, work, specifications, drawings, software, electronic data, and documents produced by JB Trenchless in connection with the Goods and Services provided pursuant to this contract and the client may use the Goods and Services only if paid for in full and for the purposes for which they were intended and supplied by JB Trenchless.

### **22. MISCELLANEOUS**

22.1 JB Trenchless shall not be liable for the delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

22.2 Failure by JB Trenchless to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations JB Trenchless has under this contract.

22.3 If any provision of this contract shall be invalid, void, illegal, or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.