

## 1. DEFINITIONS`

- 1.1 "JB" 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.
- 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 to the Customer; and
  - 1.3.2 all Goods supplied by JB to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by JB; and
  - 1.3.4 all Goods supplied by JB and further identified in any invoice issued by JB 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 or that are stored by the Customer in a manner that enables them to be identified as having been supplied by JB; and
  - 1.3.6 all of the Customer's present and after-acquired Goods that JB has performed work on or to or in which goods or materials supplied or financed by JB 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 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 to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between JB and the Customer and includes all disbursements e.g., charges JB pay to others on the Customer's behalf subject to clause 4 of this contact.

## 2. ACCEPTANCE

- 2.1 Any instructions received by JB 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 to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by JB to any other party.
- 3.2 The Customer authorises JB 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 of 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 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 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 despatch unless as agreed under a separate Trade Account agreement.
- 5.2 Payment for Goods and Services shall be made in full on or before the 30<sup>th</sup> 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 in the enforcement of any rights contained 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 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 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's risk until delivery to the Customer.

7.2 Delivery of Goods and Services shall be deemed complete when JB 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 to contract either as principal or agent for provision of Goods and Services that are the matter of this contract.

8.2 Where JB 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 PROPERTIES SECURITIES ACT 2009 (PPSA)

9.1 In this clause, financing statement, financing charge statement security agreement, and security interest has the meaning given to it 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 creates a security interest in all Goods that have previously been supplied and that will be supplied in future by JB 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 may reasonably require to:
  - i. Register a financing statement or financing charge 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 for all expenses incurred in registering a financing statement or financing charge 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 charge statement in relation to the goods in favour of a third party without the prior written consent of JB
- d) Not register a financing charge statement in respect of a security interest without the prior written consent of JB

- e) Immediately advise JB 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 and the Customer agree that section 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, 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 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 have been received. If the Customer fails to pay monies owed to JB when due, JB may without notice and without prejudice to any of its rights and remedies under these terms and conditions, enter any premises where JB 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.

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

### 13. PAYMENT ALLOCATION

- 13.1 JB may in its discretion allocate any payment received from the Customer towards any invoice that JB 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, payment shall be deemed to be allocated in such manner as preserves the maximum value of JB's purchase money security interest in the Goods and Services.

### 14. GENERAL LIEN

- 14.1 The Customer agrees the JB may exercise a general lien against and Goods and Services or property belonging to the Customer that is in the possession of JB for all sums outstanding under this contract any other contract to which the Customer and JB are parties.
- 14.2 If the lien is not satisfied with seven (7) days of the due date JB 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 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 I or towards discharge of the lien and costs of sale without being liable to any persona 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.
- 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 and a restocking fee of 15% may apply.

### 16. LIABILITY

- 16.1 Except as otherwise provided, JB shall not be liable for:
  - 16.1.1 Any loss or damage of any kind whatsoever, arising form the supply of Goods and Services by JB 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 to the Customer; and
  - 16.1.2 The Customer shall indemnify JB 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 or otherwise, brought by any person in connection with any matter, act, mission, or error by JB 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 is deemed liable to the Customer, following and arising from the supply of Goods and Services by the customer then it is agreed between JB and the Customer that such liability is limited in its aggregate.

### 17. WARRANTY

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

### 18. COPYRIGHT AND INTELLECTUAL PROPERTY

- 18.1 JB, owns and has copyright in all designs, work, specifications, drawings, software, electronic data, and documents products by JB 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 which they were intended and supplied by JB.

### 19. MISCELLANEOUS

- 19.1 JB Shall not be liable for the delay or failure to perform its obligations I the cause of the delay or failure is beyond its control.
- 19.2 Failure by JB 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 has under this contract.
- 19.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.