

**1. Interpretation**

- 1.1. "Us", "We", "Our" and "East Coast HDD" means East Coast HDD Pty Ltd ABN 26 625 767 099
- 1.2. "You", "Your" and "Client" means the person, legal entity or corporation identified on the Quotation and or on these Terms and Conditions and or the credit application (if any) who is purchasing the Goods or Services or another person or corporation or legal entity who purchases Goods or Services from Us.
- 1.3. "Asset Owner" means the person, legal entity or corporation who is the legal owner of the premises where the work the subject of the Agreement is to be done.
- 1.4. "Agreement" means and includes:
  - 1.4.1. These Terms and Conditions;
  - 1.4.2. The Quotation;
  - 1.4.3. Any Variation as accepted by Us from time to time in a form acceptable to Us; and
  - 1.4.4. Any plans, drawings, specifications or information provided to Us by You.
- 1.5. "Quotation" means the document issued by Us to You which includes the estimated Price to perform the Works, Scope of Works, Exclusions and Rates.
- 1.6. "Works" means any civil construction, trade or other services We supply to You including the supply and use of materials and equipment as part of Our business as set out within the Scope of Works in the Quotation.
- 1.7. Words importing the singular number shall be deemed to include the plural and vice versa.

**2. The Agreement**

- 2.1. Any provision to You by Us of Works whether extending from a Quotation or otherwise, is subject to these Terms and Conditions which form part of the Agreement between Us.
- 2.2. By You accepting the Works by Us, whether acceptance be in writing, part performance or full performance, You are deemed to have accepted these Terms and Conditions and intend to be bound by this Agreement.
- 2.3. Any terms and conditions contained in any order, offer, acceptance or other document including negotiations or promises made in any document or representations or statements from any discussion and all warranties (whether implied or otherwise) by Us, are not embodied herein and are expressly excluded and have no effect to the fullest extent permitted by law. The Quotation which forms part of the Agreement supersedes any verbal quotation on a scope of works.
- 2.4. The Agreement may only be amended or varied by written agreement which has been signed by Us or by another form used by Us and acceptable to Us such as our express acceptance of any Variation via email or on a Variation Form, subject to Clause 4.
- 2.5. The Quotation is valid for thirty (30) days from the date of the close of the tender or where there is no tender close date, thirty (30) days from the date on the Quotation.

**3. The Quotation**

- 3.1. Any Price or total cost stated in the Quotation is an estimate only and is not a fixed fee for the purposes of the Agreement.
  - 3.2. The Quotation is based on the information and any plans or drawings provided to Us by You. We are not liable for any inaccuracies or incorrect information supplied to Us in the contents of those documents or representations or any latent conditions.
- Directional Drilling / Under Boring Methods**
- 3.3. The Quotation is estimated on a per unit or metre basis and not a total cost basis.
  - 3.4. All directional drilling will be charged for the metres drilled from entry point to exit point.
  - 3.5. The Quotation excludes grouting of any bores and any such grouting will be priced by Us, in consultation with You prior to the commencement of the work.
  - 3.6. Where the Quotation includes any rock rate the following applies:
    - 3.6.1. The rock rate is quoted for rock with an unconfined

compressive strength of up to 45 Megapascal ("MPa") as measured by a Point Load Test in accordance with Australian Standard AS 1726-1993 and AS 4133.4.1. A factor of 25 shall apply for conversion of the Point Load Strength Index to obtain the approximate Unconfined Compressive Strength (UCS).

- 3.6.2. The rock rate quoted excludes loose sand, cobbles, gravels or river wash of any size, this will only be quoted by Us on request by You due to the complexity and difficulty of this type of drilling. Any work of this nature which may be required to be done will be estimated at Our absolute discretion and priced in consultation with You prior to the commencement of such work.
- 3.6.3. The rock rate will be charged for the metres drilled through the rock as documented on Our bore log and daily drill log. This may be inspected by You from time to time before completion of any Services and We may charge You a reasonable fee for any such inspection, in Our absolute discretion.
- 3.7. The Quotation does not include any enquiry, testing, investigation or otherwise by You before the completion of the Services by Us in relation to the amount of drilling conducted by Us, as such this will be charged as a fee to You, which may become payable on demand by Us.
- 3.8. The Quotation does not include any allowance to use hole openers.
  - 3.8.1. Where We reasonably determine that hole openers are required, We will estimate the work at Our absolute discretion and price in consultation with You prior to the commencement of such work.
  - 3.8.2. Any pricing estimate or additional quoted use of hole openers will be priced allowing for one set only of cutters and arms. If additional arms and cutters are required during the reaming process these items may be supplied to You by Us at the cost price or other price as we may reasonably determine with consideration to the extent of the work.
- 3.9. The Quotation allows for the use of a walkover locating and/or steering system. Where we determine, in Our absolute discretion, that this system may be inadequate for the work to be completed as part of any Service by Us, We may use alternative steering systems which may vary the Price of the Quotation. Any variation of this nature which may be required to be done will be estimated at Our absolute discretion and priced in consultation with You prior to the commencement of such work.
- 3.10. Any estimates in the Quotation for fuel may be subject to change and where we determine it reasonably necessary, We may charge a fuel surcharge at the completion of the Service where the costs of fuel increase from the price used in the Quotation.
- 3.11. Where the Quotation provides for excavation of an entry and exit pit this is reference to a pit measuring 1.5L x 1.2W x 1.4D. Any and all other excavation required by You must be done at Your own cost and is expressly excluded from the Price.
- 3.12. Where the Quotation includes the installation of graded pipeline(s), We are not liable for the accuracy of the grade. You must provide survey points every five (5) metres along any bore path before We will undertake the installation of graded pipeline(s).
- 3.13. The Quotation is based on the premise that any work sites or premises where Services are being provided by Us are accessible in standard trade vehicles. No allowance has been made for four-wheel drive or other special vehicles, extendable scaffolding, wet weather access, work area protection etc. If it is reasonable to determine that special access is required, it is Your responsibility to advise Us immediately and the Quotation may be subject to variation.

- 3.14. We will implement additional charges where unnatural ground conditions are encountered, including but not limited to; unused manholes, steel, car bodies, pipes etc. We will estimate the work at Our absolute discretion and price in consultation with You prior to the commencement of such work.
- 3.15. You acknowledge that the procedure of directional drilling requires the use of drilling fluids and such fluids may be charged to You in addition to any quoted Price.
- 3.16. We are not responsible or liable for any loss, damage or injury in relation to product pipe that has been specified or supplied by You with a manufacturers rating of less than:
- 3.16.1. PN12.5 PE100 for pipe up to 200mm;
- 3.16.2. PN16 PE100 for pipe up to 450mm;
- 3.16.3. PN20 PE100 for pipe up to 600mm.
- 4. Variations**
- 4.1. Any request by You to change what has been quoted in any way with respect of the Works in the Quotation or the date of supply ("Variation") is at Our sole discretion and We may reject any such Variation.
- 4.2. Any changes to Price for any Variation whatsoever will be determined by Us.
- 4.3. Any changes to the Price, Quotation, Agreement or Works determined in consultation with You must be expressly agreed to in writing by both parties to have an effect on the Agreement.
- 4.4. If a Variation affects the Completion Date, the Completion Date is deemed to be extended to allow for the Variation to be completed.
- 4.5. If we determine a direction onsite by You to Us is a Variation, and We preform the Variation as directed by You, You shall be liable to pay Us for the Variation as a price determined by Us.
- 4.6. Any Variation, agreed to by Us, forms part of the Agreement.
- 5. Price and Payment**
- 5.1. "Price" means the monetary figure stated on the Quotation as accepted by Us.
- 5.1.1. Except where expressly stated in writing by Us, the Price is not inclusive of delivery, transport or storage costs for the Works.
- 5.1.2. The Price subject to change in accordance with these Terms and Conditions.
- 5.1.3. The Exclusions listed within the Quotation are not included in the Price, unless expressly stated in writing by Us.
- 5.1.4. All amounts quoted by us are excluding Goods and Services Tax (GST), unless expressly stated in writing by Us.
- 5.2. You must pay the Price in the method which was agreed upon in writing between the Parties within seven (7) days from the date of invoice.
- 5.3. Any Works performed outside of the Working Hours, as defined in clause 8.1, will incur an additional 35% on labour and 15% on equipment.
- 5.4. A mobilisation fee of 15% on the Price will be payable by You which becomes due and payable upon You signing the Agreement. We may, in Our sole discretion, refuse to commence any works the subject of the Agreement, until the mobilisation fee has been paid in full by You in cleared funds.
- 5.5. We are not liable to You for any loss, damage or delay arising from any refusal or non-payment of the mobilisation fee.
- 5.6. Payments made by:
- 5.6.1. Credit Card (Visa or MasterCard) incur a 2% surcharge which will be applied to any payment made in this manner;
- 5.6.2. Cheque must be accompanied by the payer's name and Your name (if different) and the payer's address and telephone number and Our order or Quotation number printed on the back of the cheque; and
- 5.6.3. Electronic Funds Transfer must be accompanied by the reference word or number specified to You by Us on the invoice, Quotation or order.
- 5.7. We may require personal guarantees where You are a corporation, or where, in Our sole discretion we require such a guarantee for the Price of the Works and any GST payable on the Price, upon such terms as We require. If You or any of Your directors (as the case may be) refuse to give a personal guarantee in accordance with this clause, We may terminate any Agreement and will not be liable for any loss or damage in any way suffered by You for such termination, whatsoever.
- 5.8. You may not set off the Price or any amounts charged to You in accordance with this Agreement against any other Price or invoice, or deduct or set-off such amount from any amount We may from time to time owe to You without Our permission in writing addressed to You.
- 5.9. This Agreement does not allow for retention of payment in any way. You may not withhold payment of the Price or any amounts payable by You for any reasons, unless agreed by Us in writing.
- 5.10. Interest will be charged on the Price or any amounts payable by You or owing to Us after they fall due in accordance with this Agreement at the rate of 1.5% per month on daily balances in respect of any amounts until paid.
- 6. Delays and Stand Downs**
- 6.1. Delays or Stand Downs caused by You, whether directly or indirectly, for any reason will be charged in accordance with the Hourly Rates set out in the Quotation and will be recoverable from You by Us as a liquidated debt.
- 6.2. We do not accept any liability for any loss or damage to You whatsoever as a result from any delays caused by You whether indirectly or directly.
- 7. Your Further Obligations**
- 7.1. You must ensure that You have obtained all licences or permits required in respect of the works from all relevant authorities including corporations with responsibility for assets.
- 7.2. You warrant that where you direct Us to do any Works that You are lawfully allowed to have the Works completed with respect to permits, approvals and authority from the relevant regulatory bodies.
- 7.3. You must indemnify Us for any damages or losses including but not limited to any cost in relation to any fine or penalty arising from any failure to obtain any licence, approval or permit required to undertake any work involved in the Service or provision of Goods to You by Us.
- 7.4. You must fulfil any traffic management and rail safety requirements or obligations imposed by any law in respect of the work involved in the Works by Us.
- 7.4.1. You may only discharge this responsibility where we have agreed to such discharge expressly in writing.
- 7.4.2. Where we undertake this responsibility on Your behalf due to Your failure or where we expressly in writing agreed to undertake such responsibility We will charge you an hourly rate of our determination and discretion for the cost of fulfilling the responsibility plus the costs of any fees payable in association with the responsibility.
- 7.4.3. You warrant to Us that at all times You are complying with occupational health and safety obligations imposed by law in relation to You, Us, the Service, the provision of Goods and the premises where We will be completing any Service for You.
- 7.4.4. Where We damage or cause any loss in any way to any underground asset not identified by Us, the "Dial Before You Dig" (DBYD) or the Asset Owner, You must indemnify Us from any costs, whatsoever, directly or indirectly associated with damages, repair or replacement.
- 8. Access to Site**
- 8.1. All Services will be conducted in regular business hours (7.00am – 6.00pm) ("Working Hours"), however We may

- choose to work at any lawful time in Our sole discretion.
- 8.2. You must give Us unrestricted access to any work sites or premises where Services are being done by Us at Your instruction during Working Hours every day (including weekends) from the commencement to the completion of the provision of the Service or any Works.
- 9. Competition and Consumer Act 2010 (Cth): Australian Consumer Law**
- 9.1. Under Australian law (State and Commonwealth), there are guarantees and warranties implied upon services and goods, and there are rights and remedies available to a consumer which cannot be excluded from any Agreement. We do not intend to modify, restrict or contract-out of any of those specific conditions, guarantees or warranties which by law We are not able to exclude from this Agreement.
- 9.2. As far as is legally permitted, We do not guarantee any Works provided to You by Us will be fit for all purposes You require them for and rely on clause 2.3 in this instance.
- 10. Completion/Delivery**
- 10.1. Any date quoted, represented, expressed (whether written or verbal) for completion and/or delivery is an estimate only and We will not be held liable for any loss or damage howsoever arising out of failure to deliver or complete any Works under any Agreement, even if We do so negligently, on or before the estimated date.
- 10.2. We are not liable to any third party for any consequential damages or losses by reason of a delay in completion of Works.
- 10.3. A delay of any type due to any circumstance does not give rise to any claim by You.
- 10.4. We reserve the right to deliver by instalments where we consider it necessary or appropriate in Our sole discretion. Where completion or delivery is done by instalments, You will be liable to pay for each instalment as it is delivered and as per the payment terms in clause 4.
- 10.5. If completion is made by instalments, You will not be entitled to terminate the Agreement without payment in full of the Price.
- 11. Subcontractors**
- 11.1. We may, from time to time, engage subcontractors to do any work for Us and this may be done without notice to You.
- 11.2. These Terms and Conditions form part of any agreement between You and any sub-subcontractors.
- 12. Risk and Title**
- 12.1. We retain legal and equitable title in any goods and materials in conjunction with the Works ("Goods") supplied to You until payment in full of the Price for, or in connection with, the supply of the relevant Goods has been received by Us.
- 12.2. Risk in any Goods shall pass and remain with You at all times, despite outstanding monies owed to Us or prior to Your payment of the Goods. We are not liable for any loss or damage to such items or materials.
- 12.3. Until payment in full has been received, the following terms apply:
- 12.3.1. You must not allow any person to have or acquire any security interest in the Goods.
- 12.3.2. You must not remove, deface or destroy any identifying plate, mark or number on the Goods.
- 12.3.3. You must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of Us, store them in such a way they are clearly identified as the property of Us and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by Us.
- 12.3.4. We are irrevocably entitled at any time and from time to time to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of Our rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, We and Our agents are irrevocably authorised by You to enter any of Your premises or vehicles or those of any third party. You agree to obtain the consent of any such third party to such entry by Us and to indemnify Us and Our agents for any liability arising from any entry upon such third parties' premises or vehicles. We and Our agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.
- 12.3.5. This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form or commingled with other goods.
- 13. Security and Charge**
- 13.1. You acknowledge and agree to Us having a lien over all goods and equipment in Our possession belonging to You to secure payment of any or all amounts outstanding from time to time.
- 13.2. Without limiting the generality of any charge which may be enforced by Us over the goods and equipment, You agree that:
- 13.2.1. You consent to us registering a charge over all present and after acquired property owned by You which includes any Goods the subject of the Agreement in your possession which have not been paid for by You or any other property in our reasonable discretion; and
- 13.2.2. On request by Us, You must execute any documents and do all things reasonably required by Us to perfect the charge given including registering a security interest over any personal property in accordance with *Personal Property Securities Act 2009* ("PPSA"); and
- 13.2.3. You appoint Us to be Your lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard; and
- 13.2.4. You indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the security documents; and
- 13.2.5. You consent unconditionally to Us lodging a caveat over any of Your current or future freehold or leasehold property and authorise Us or Our solicitors to execute any consent form as Your attorney for the purpose of registering the caveat.
- 13.3. If You supply any of the Goods to any person before all money owed to Us has been paid, You agree that:
- 13.3.1. You hold the proceeds of any re-supply of the Goods on trust for and as agent for Us immediately when they are receivable or are received (whichever is earlier); and
- 13.3.2. You must either pay the amount of the proceeds of re-supply to Us immediately when they are received or pay those proceeds into a separate account with a bank or a financial institution or deposit taking institution as trustee for Us.
- 13.4. Where we offer you a period of credit or period of extension for payment and You fail to pay for the Works within the period of credit (if any) or of any period extended by Us at our discretion, We may recover possession of any Goods We provided to You which have not been paid in full for and You agree that We have an irrevocable right to do so without incurring liability to You or any person claiming through You, even if the Goods have become a fixture of a site.
- 13.5. For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- 13.6. You hereby waive any right You may otherwise have to:
- 13.6.1. Receive any notices You would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135;
- 13.6.2. Apply to a Court for an order concerning the removal of an accession under section 97;
- 13.6.3. Object to a proposal of You to purchase or retain any collateral under ss 130 and 135; and

13.6.4. Receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to You from time to time.

13.7. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections in this clause are to sections of the PPSA.

**14. Claims**

14.1. Subject to clause 9.1 We disclaim all conditions, warranties and guarantees whether express or implied conferred on You by equity, trade, custom or usage or otherwise and all those rights and remedies are excluded to the fullest extent permitted by Law.

14.2. You must notify us, in writing, of any defects, damage, complaints, negligence by Us or matters which may give rise to any claim within fourteen (14) calendar days from the date of completion for Services or date of delivery for Goods ("Defects Liability Period").

14.3. Notwithstanding any other clause in these Terms and Conditions, under no circumstances are We liable in contract, tort including without limitation negligence or breach of statutory duty or otherwise to compensate You for any:

- 14.3.1. increased costs or expenses payable by You;
- 14.3.2. loss of profit, revenue, business, contracts, opportunity or anticipated savings;
- 14.3.3. liquidated damages;
- 14.3.4. loss or expense resulting from a claim by a third party; or
- 14.3.5. special, indirect or consequential loss or damage of any nature whatsoever caused by Our failure to complete or delay in completing the Works.

14.4. Subject to any limitations by law, we are not liable for any loss, damage or injury whatsoever, including any consequential damage, loss or injury to You or Your property or Your agent or any person in association with Our Works, howsoever arising, out of this Agreement, the provision of Works to You by Us or our agents, or of goods manufactured by Us and provided to You indirectly through any third party or any Services provided through any third party.

14.5. If You do not notify Us within the Defects Liability Period about any issues, defaults, complaints or otherwise in connection with the Works, you are taken to have accepted the Works in their state and, except as permitted by the Australian Consumer Law or other statute, You will have no recourse against Us for any defective Works after the Defects Liability Period;

14.6. We are not liable in any circumstances for:

- 14.6.1. Defects or damages with the Works arising from or caused in whole or in part by an error or omission in the design, specification or plan provided by You to Us for the supply of Works where in accordance with the said design, specification or plan by Us;
- 14.6.2. Defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair, installation, placing, labelling, adjustment, servicing or alteration or accident;
- 14.6.3. Any latent conditions;
- 14.6.4. Loss howsoever of any transport, installation, removal, labour or storage;
- 14.6.5. Defects in any parts or equipment of any Goods; and
- 14.6.6. Technical advice or assistance given or rendered by Us to You whether or not in connection with the supply of Works, this Agreement or any servicing or care instructions for the Works.

14.7. The only remedy to You, as far as permitted by law, for defects during the Defect Liability Period is for the rectification of such defects by Us.

**15. Restraint**

15.1. You must not offer to retain, employ, hire or contract or permit any other person or agent associated with You to

offer any of Our employees, contractors or workers, whether directly or indirectly, while they are working or performing a job for Us under the Agreement and in perpetuity for a period of six (6) months after the completion of any Agreement with Us. We will only waive this obligation with express written notice to You.

15.2. Where You breach the above clause, You must pay on demand to Us a permanent placement fee calculated in accordance with the following table –

Period of retention, employment, hire or contract with You	Fee payable to Us (excluding GST)
Not exceeding 3 months	20% of wages or salary*
Greater than 3 months but not exceeding 6 months	15% of wages or salary*
Greater than 6 months	10% of wages or salary*

\*Wages or salary is defined as annual fulltime pay plus Superannuation

**16. Notices**

16.1. Any notice required under the Agreement or in accordance with these Terms and Conditions must be in writing and given by hand, prepaid post, email or facsimile addressed to the intended recipient at the contact details set out in the Agreement or as notified by either party from time to time.

16.2. Any notice or document shall be deemed to have been given and received on the earliest date of:

- 16.2.1. The actual receipt;
- 16.2.2. Confirmation of correct transmission of facsimile or email; or
- 16.2.3. Three (3) business days after posting.

16.3. Provided where faxed as (b) or posted as (c) above, a notice or document received after 5:00PM on a business day in the State in which it was received is deemed to be been received the following business day at 9:00AM.

**17. Force Majeure Event**

17.1. Where a circumstance or event that is beyond Our reasonable control causes a delay to an agreed completion date ("Force Majeure Event"), We will give You notice and the obligations under the Agreement may suspend (except an obligation to pay money) to the extent to which they are affected by the relevant Force Majeure Event, for as long as the Force Majeure Event continues.

17.2. We will use Our best endeavours to remove, overcome or minimise the effects of that Force Majeure Event, however, where such act is an industrial dispute specific to its own workforce it will deal with the event at its complete discretion.

17.3. If a Force Majeure Event continues for more than three (3) months, either party may terminate the Agreement by giving three (3) business days' written notice to the other party.

**18. Default**

18.1. Where You default on a term or condition of this Agreement with Us, We may at any time and from time to time:

- 18.1.1. Withhold further supplies of stop the provision of Works to You or cancel any Agreement, or vary the terms of any Agreement without prejudice to Our rights hereunder;
- 18.1.2. Waive any of Our rights under any Agreement upon such terms as We may determine acceptable, but without prejudice to Our rights of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver; or
- 18.1.3. Do anything else in conjunction with this Agreement, in our sole discretion that we deem necessary or acceptable to Us.

18.2. You authorise Us or an agent appointed by Us to review Your financial records for the purpose of determining Your ability to make full payment under any Agreement with Us or pay any debts owed to Us when they fall due and You further

irrevocably grant to Us a licence to enter Your premises and retrieve such records for that purpose.

18.3. Where You default on any payments owed to us under any Agreement with Us You will be liable to pay interest at the rate of 1.5% per month on daily balances in respect of any amounts until paid. You acknowledge that interest will be included into the recovery of any amount as a liquidated debt.

#### 19. Indemnity

19.1. You agree to indemnify Us against any losses, damages, costs, fees, expenses, charges, disbursements or injury to or death to any person, suffered or incurred by Us which arises directly or indirectly in relation to:

19.1.1. Any breach of these Terms and Conditions;

19.1.2. Any contravention of any law by You; and/or

19.1.3. Any action brought or threatened against Us by any third party which arises directly or indirectly from Your purchase of the Works from Us.

19.2. Failure to pay Us all sums of money owed to Us within the time stipulated by Us or of any extension of time stipulated by Us in writing to You shall be recoverable as a liquidated debt and may be recovered in accordance with the relevant States Security of Payments Act.

#### 20. Cancellation

20.1. Without prejudice to any other remedies We may have, if You breach any of your Obligations under these Terms and Conditions, We may suspend or terminate the supply of Works to You. We will not be liable to You for any loss or damages suffered to You for Us exercising Our rights under this clause.

#### 21. Change of Ownership and Assignment

21.1. You agree to notify Us in writing of any change of ownership of You or Your business, or of any change in share distribution or directorship of any company You are a part of which may have an interest in Our Service, Goods or Our Agreement with You, or of any other change whatsoever affecting the Agreement within seven (7) days from the date of such change and You agree to indemnify Us against any loss or damage incurred by Us as a result of Your failure to notify Us of any change or of any loss or damage the result of such change.

21.2. You may only assign the Agreement without Our written consent which may not be withheld unreasonably. We may assign the Agreement with or without notice to You.

#### 22. Confidentiality

22.1. To the extent permitted by law, You agree to keep this Agreement and any negotiations confidential between Us and You.

22.2. Where You are required by law to disclose any information related to the Agreement or about Our Works, You undertake to notify us immediately about such disclosure and what has or is required by You to be disclosed.

#### 23. Intellectual Property

23.1. We retain all intellectual property in the materials, Works, Goods and products, but licence to You to use such intellectual property only for the use, repair and replacement of the Goods at your exclusive Premises, but such licence is revocable if We terminate the Agreement.

23.2. You warrant that any use by Us of Your materials for the purpose of supplying the Works to You will not infringe on the intellectual property of any third party and You indemnify Us against any such claims.

#### 24. Entire Agreement

24.1. This Agreement constitutes the entire agreement for the supply of Works and supersedes all previous arrangements, correspondence, understandings and communications whether written or oral and shall not be contracted out of.

#### 25. Severability

25.1. Any provision in these Terms and Conditions which is or becomes invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so

as to be valid and enforceable and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms and Conditions of the validity or unenforceability of that provision in any other jurisdiction.

#### 26. No Waiver

26.1. No delay, neglect or forbearance by Us in enforcing against You for any provision of this Agreement shall be a waiver, or in any way prejudice any right, by Us under this Agreement.

#### 27. Jurisdiction

27.1. Queensland law governs all matters in connection with the Agreement or the Works, and each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

#### 28. General

28.1. A failure by Us to exercise any power or right conferred to Us by the Agreement is not a waiver of such power or right.

28.2. We may use Your name in any promotional materials free of charge on a worldwide basis.

28.3. We may at any time appoint a third party as our non-exclusive agent to collect any debts owed by You that are due from time to time to Us.

28.4. The Agreement may be signed in any number of counterparts and all counterparts together make one instrument.

28.5. These Terms and Conditions are enforceable and form part of the Agreement regardless of completion by You of Your signature and date.