

**1. Definitions**

- 1.1 "MGI" shall mean MGI Piling Australia Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of MGI Piling Australia Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by MGI to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by MGI to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by MGI to the Client.
- 1.5 "Services" shall mean all Services supplied by MGI to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Equipment" shall mean Equipment supplied on hire by MGI to the Client (and where the context so permits shall include any supply of services) and is as described on the invoices, quotation, or any other work authorisation forms as provided by MGI to the Client.
- 1.7 "Price" shall mean the price payable for the Goods as agreed between MGI and the Client in accordance with clause 3 of this contract.

**2. Acceptance**

- 2.1 Any instructions received by MGI from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by MGI shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of MGI.
- 2.4 The Client shall give MGI not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by MGI as a result of the Client's failure to comply with this clause.

**3. Price And Payment**

- 3.1 At MGI's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by MGI to the Client in respect of Goods supplied; or
  - (b) MGI's current hourly or meterage rate at the date of delivery of the Goods according to MGIs current Price list; or
  - (c) MGI's quoted Price (subject to clause 3.2) which shall be binding upon MGI provided that the Client shall accept MGI's quotation in writing within thirty (30) days.
- 3.2 MGI reserves the right to change the Price in the event of a variation to MGI's quotation.
- 3.3 At MGI's sole discretion a deposit may be required.
- 3.4 MGI may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.
- 3.5 At MGI's sole discretion payment of the Price shall be subject to retention by the Client of an amount (hereafter called the "retention money"), being equal to a percentage of the Price as agreed between the parties. The Client shall hold the retention money for the agreed period following completion of the works during which time all works are to be completed and/or all defects are to be remedied.
- 3.6 At MGI's sole discretion:
  - (a) payment shall be due on delivery of the Goods; or
  - (b) payment for approved Client's shall be due thirty (30) days following the end of the month in which the invoice was issued.
- 3.7 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.8 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and MGI.
- 3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**4. Delivery Of Goods**

- 4.1 At MGI's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by MGI or MGI's nominated carrier).
- 4.2 At MGI's sole discretion the costs of delivery are included in the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then MGI shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.5 MGI may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

- 4.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 4.7 The failure of MGI to deliver shall not entitle either party to treat this contract as repudiated.
- 4.8 MGI shall not be liable for any loss or damage whatever due to failure by MGI to deliver the Goods (or any of them) promptly or at all.

## 5. Risk

- 5.1 If MGI retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, MGI is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MGI is sufficient evidence of MGI's rights to receive the insurance proceeds without the need for any person dealing with MGI to make further enquiries.
- 5.3 The Client warrants that any structure or platform from which they request MGI to provide drilling services will be safe and structurally sound and will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation. The Client further agrees to indemnify MGI for any costs or damages howsoever arising out of any breach of this clause.

## 6. Underground Locations

- 6.1 Prior to MGI commencing any work the Client must advise MGI 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, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Telstra cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 6.2 Whilst MGI will take all care to avoid damage to any underground services the Client agrees to indemnify MGI in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 6.1.

## 7. Title

- 7.1 MGI and Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid MGI all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to MGI in respect of all contracts between MGI and the Client.
- 7.2 Receipt by MGI 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 MGI's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until MGI shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from MGI to the Client MGI may give notice in writing to the Client to return the Goods or any of them to MGI. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) MGI shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Client fails to return the Goods to MGI then MGI or MGI's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
  - (e) the Client is only a bailee of the Goods and until such time as MGI has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for MGI; and
  - (f) the Client shall not deal with the money of MGI in any way which may be adverse to MGI; and
  - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of MGI; and
  - (h) MGI can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
  - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that MGI will be the owner of the end products.

## 8. Client's Disclaimer

- 8.1 The Client hereby disclaims any right to rescind, or cancel any contract with MGI or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by MGI and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## 9. Defects

- 9.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify MGI of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford MGI an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which MGI has agreed in writing that the Client is entitled to reject, MGI's liability is limited to either (at MGI's discretion) replacing the Goods or repairing the Goods, except where the Client has acquired Goods as a consumer within the meaning of the

Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

9.2 Goods will not be accepted for return other than in accordance with 9.1 above.

**10. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)**

10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

**11. Warranty**

11.1 For Goods not manufactured by MGI, the warranty shall be the current warranty provided by the manufacturer of the Goods. MGI shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

11.2 To the extent permitted by statute, no warranty is given by MGI as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. MGI shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

**12. Intellectual Property**

12.1 Where MGI has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in MGI, and shall only be used by the Client at MGI's discretion.

12.2 The Client warrants that all designs or instructions to MGI will not cause MGI to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MGI against any action taken by a third party against MGI in respect of any such infringement.

**13. Default & Consequences of Default**

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

13.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify MGI from and against all costs and disbursements incurred by MGI in pursuing the debt including legal costs on a solicitor and own client basis and MGI's collection agency costs.

13.3 Without prejudice to any other remedies MGI may have, if at any time the Client is in breach of any obligation (including those relating to payment), MGI may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. MGI will not be liable to the Client for any loss or damage the Client suffers because MGI has exercised its rights under this clause.

13.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

13.5 Without prejudice to MGI's other remedies at law MGI shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MGI shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to MGI becomes overdue, or in MGI's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**14. Security And Charge**

14.1 Despite anything to the contrary contained herein or any other rights which MGI may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is MGI of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to MGI or MGI's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that MGI (or MGI's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should MGI elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify MGI from and against all MGI's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint MGI or MGI's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

**15. Cancellation**

15.1 MGI may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice MGI shall repay to the Client any sums paid in respect of the Price. MGI shall not be liable for any loss or damage whatever arising from such cancellation.

- 15.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by MGI (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3 Cancellation of orders for special Goods to be made at the Client's request or to the Client's specifications will definitely not be accepted, once work has commenced on the order.
- 15.4 In the event the Client orders the commencement of drilling, and subsequently reduces the number of holes to be drilled, then the Client shall be liable for all costs incurred by MGI for all holes that have already been drilled:
- (a) in satisfaction of that order; and
  - (b) prior to the time of cancellation; or
  - (c) prior to the reduction of the order.

**16. Privacy Act 1988**

- 16.1 The Client and/or the Guarantor/s agree for MGI to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by MGI.
- 16.2 The Client and/or the Guarantor/s agree that MGI may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 16.3 The Client consents to MGI being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that personal credit information provided may be used and retained by MGI for the following purposes and for other purposes as shall be agreed between the Client and MGI or required by law from time to time:
- (a) provision of Goods; and/or
  - (b) marketing of Goods by MGI, its agents or distributors in relation to the Goods; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 16.5 MGI may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

**17. Building and Construction Industry Security of Payments Act 1999**

- 17.1 MGI's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 17.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

**18. Equipment Hire**

- 18.1 The Equipment shall at all times remain the property of MGI and is returnable on demand by MGI. In the event that the Equipment is not returned to MGI in the condition in which it was delivered MGI retains the right to charge the Price of repair or replacement of the Equipment.
- 18.2 The Client shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by MGI to the Client.
- 18.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, MGI's interest in the Equipment and agrees to indemnify MGI against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 18.4 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of MGI and operates the Equipment in accordance with the Client's instructions. As such MGI shall not be liable for any actions of the operator in following the Client's instructions.

**19. General**

- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

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- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 19.3 MGI shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by MGI of these terms and conditions.
- 19.4 In the event of any breach of this contract by MGI the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by MGI.
- 19.6 MGI may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 MGI reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which MGI notifies the Client of such change.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.9 The failure by MGI to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MGI's right to subsequently enforce that provision.