

CM-R03 TERMS AND CONDITIONS OF BUSINESS

1. OUTLINE

1.1 **Currency:** These terms and conditions of business (**Terms**) apply to the supply of all Services and Deliverables by us to you from the date that you accept these Terms.

1.2 **Acceptance:** You accept these Terms when:

- 1.2.1 you submit an Order;
- 1.2.2 you accept delivery of, or any part of, the Services and Deliverables; or
- 1.2.3 you make Payment, or partial Payment, for any Services and Deliverables supplied by us,

whichever occurs first.

2. QUOTES + ORDERS

2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Services and Deliverables.

2.2 **Providing a Quote:** We may provide you a Quote for the potential supply of Services and Deliverables. The Quote may include:

- 2.2.1 the details of the Project Site (including but not limited to the address of the Project Site, Project Manager's name and contact details, Project Site phone number);
- 2.2.2 the estimated Scope of Work (specifying all Services and Deliverables required);
- 2.2.3 the standard hourly rates of the Services;
- 2.2.4 a fixed fee;
- 2.2.5 the standard hourly rates for Services where there are Variations to the SOW;
- 2.2.6 itemised Reimbursable Expenses;
- 2.2.7 the timing of supply of the Services and Deliverables; and
- 2.2.8 other relevant details.

2.3 **Validity of Quote:** A Quote is valid for 30 days only. We reserve the right to withdraw a Quote at any time before you place an Order.

2.4 **Placing an Order:** If our Quote is acceptable to you, you may place an Order for the supply of Services and the Deliverables.

2.5 **Timing:** Any dates provided in a Quote are estimates only. We will use all reasonable endeavours to supply the Services and the Deliverables by the dates provided in a Quote where practicable in the circumstances to do so but are not liable to you for any delay whatsoever in performance of the Services.

2.6 **Minimal site visit charge:** The minimum charge for a Project Site visit set out in any Order is:

- 2.6.1 4 hours for a Project Site visit during the following hours: from 6am to 6pm; and
- 2.6.2 6 hours for a Project Site visit outside of the hours specified in clause 2.6.1.

2.7 **Commencement of the supply of Services:** The supply of the Services may only commence upon:

- 2.7.1 receipt of all relevant information from you as requested by us and required to supply the Services and the Deliverables;
- 2.7.2 upon confirmation by us to you of the Commencement Date; and
- 2.7.3 access to the Project Site.

2.8 **Change of scope:** If you become aware of any matter which will change or has changed the scope or timing of the Services then you must as soon as practicable give notice to us of the matter and as far as practicable, details of the change. In any event, we are entitled to an adjustment to any fixed fee described in a Quote for any additional work necessary to:

- 2.8.1 complete the additional work; and
- 2.8.2 rectify or overcome any error, omission, discrepancy or other defect in information provided to us by you as required to perform the Services.

2.9 **Additional conditions:** Unless otherwise agreed by us in writing, these Terms will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you.

3. SURVEY STAFF

3.1 **Survey Staff:** We will provide Survey Staff to supply the Services and the Deliverables. The Survey Staff will perform the Services to the standard of skill, care and diligence expected of a skilled and competent person in similar circumstances and in accordance with industry standards.

3.2 **Changes to the Survey Staff:** Members of our Survey Staff may vary from time to time subject to availability, leave requirements, specific skill sets applicable to different Services set out in the Order and other factors which may arise from time to time.

4. PROJECT SITE

4.1 **Site:** You must ensure the Project Site is accessible.

4.2 **Project Site visits:** Our Survey Staff will visit the Project Site upon your request provided you give 48 hours' notice prior to the date on which you request the visit.

4.3 **Delay:** Any delays by you or rescheduling costs (due to rescheduling on

your part) may incur an additional charge which must be agreed and specified in the Order. Under no circumstances will any delay by us constitute a breach of contract and despite any delay on our part, you must continue to meet your obligations under these Terms. If progress in performing the Services is delayed for reasons beyond our control (such as a failure on your part to prepare the Project Site), we reserve the right to charge additional fees as appropriate in accordance with our applicable rates at the time the Services were scheduled to be performed.

4.4 **Work, Health & Safety:** You must ensure that the working area is safe and complies with all work, health and safety laws. Any possible dangers must be communicated to us before you provide us with entry to the Project Site.

4.5 **Access:** You must make suitable arrangements to ensure we have access to the Project Site. The fees in the Quote are provided on the assumption that access to the Project Site will be unhindered.

5. PRICE

5.1 **Fees:** The fee charged and payable for the Services and Deliverables shall be a fee calculated either on an hourly or fixed fee basis in Australian dollars together with any applicable taxes, Charges and delivery costs regarding the Services and the Deliverables as agreed in writing between the parties in relation to each Order.

5.2 **Variation of price:** Prices in any Quote for the supply of Services and the Deliverables are based on the costs prevailing at the time of the Quote. Subject to your rights under law, we reserve the right to vary the price if:

- 5.2.1 there is any movement in the cost of supplying the Services and Deliverables specified in your Order, including any Charges; or
- 5.2.2 the Services and Deliverables specified in your Order are varied from the Services and Deliverables specified in our Quote,

and we provide you reasonable notice of any such variation of price.

5.3 **Variation in SOW:** Either party may vary the SOW. If you vary the SOW after we start providing the Services and Deliverables set out in the Order, unless agreed in writing between the parties, the price for the supply of Services and the Deliverables in the Variation is the hourly rates set out in the Quote. We may vary the SOW if in our reasonable opinion it is necessary to do so and will provide you written confirmation of any variation in the SOW at the time we deem the variation necessary.

6. PAYMENT

6.1 **Invoices:** Unless we otherwise agree, we will issue you an Invoice on a monthly basis until the Services are fully supplied and any Deliverables are fully delivered or sooner in the event of termination of any agreement of which these Terms forms part.

6.2 **Due Date:** The due date for payment is within 30 days of the end of the month of the date of the Invoice.

6.3 **Payment method:** You must make all Payments by direct credit to the bank account nominated by us or as otherwise indicated by us in writing.

7. PAYMENT DEFAULT

7.1 **Default Interest:** If you fail to make a Payment in accordance with clause 6 (Payment), we may:

7.1.1 charge Default Interest at a rate per annum of 4% above the Reserve Bank of Australia cash rate applicable from time to time if payment is made later than 30 days from the end of the month of the date of the Invoice; and

7.1.2 suspend the supply of the Services and the Deliverables by giving at least 2 business days' written notice to you of our intention to do so.

7.2 **Payment of Default Interest:** Default Interest pursuant to clause 7.1 shall be:

7.2.1 payable on demand; and
 7.2.2 calculated daily from the Due Date to the actual date the Payment is made in full.

7.3 **Costs of enforcement:** We may recover from you any costs we incur to collect any Payment.

7.4 **Set off:** You may not set off against any Payment any claims which you may have against us.

7.5 **Default Interest amount credited first:** Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 7 to the actual date of Payment.

7.6 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.

8. SUSPENSION + CANCELLATION

8.1 **Suspension of Services by you:** If as a consequence of your instructions we delay or suspend (but not cancel) performance of our Services for any amount of time, we may:

8.1.1 request payment in full for all work in progress relating to the relevant

Order up to and including the time of suspension; and/or

8.1.2 vary the price for the uncompleted portion of the relevant Order.

8.2 **Recommencement of suspended Services due to a default in payment by you:** If, in accordance with clause 7.1.2, we have suspended the provision of our Services, we reserve the right not to recommence services until 3 business days immediately following the day on which you make payment of the Payment due plus any applicable interest. If we incur a loss or expense due to the suspension of the provision of our Services, you are liable to reimburse us for such loss or expense. We accept no liability for any loss or damage suffered by you or any third party claiming through you, due to us not supplying the Services during the suspension.

8.3 **Cancellation by you:** You may not cancel an Order, or any part of it, unless:

8.3.1 we give our written consent; and
 8.3.2 you pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us regarding the cancelled Order or the cancelled part of the Order to the date of cancellation.

8.4 **Cancellation by us:** We may in writing cancel an Order or delivery of an Order without liability to you if:

8.4.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency;
 8.4.2 you fail to make a Payment on time; or
 8.4.3 we reasonably form the opinion that supplying Services and the Deliverables to you may have a negative impact upon our business or commercial reputation or image.

9. YOUR OBLIGATIONS

9.1 **Accurate information:** You must provide accurate and correct information and directions in connection with the Services upon which we may rely. You undertake to ensure full instructions are given to us and are provided in sufficient time to enable the required Services to be performed effectively and efficiently. We will not be liable for any error or omission in the Services where we have relied on a document provided by you nor for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions from you.

9.2 **Insurance:** You must take out and maintain in force insurance policies with a reputable and financially sound insurer and coverage limits as set out below during the Term:

9.2.1 public and products liability insurance in an amount of not less than \$20 million per claim; and

9.2.2 insurance against liability which may arise under relevant workers or accident compensation legislation.

9.3 **Cancellation of insurance:** If for any reason an insurer cancels, or fails or declines to renew, one of the above policies, then you must immediately purchase a replacement policy.

10. EXCLUSIONS + LIMITATIONS

10.1 **ACL exception:** The exclusions and limitations in this clause 10 are subject to clause 11 (*Statutory Rights*).

10.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.

10.3 **Limitations:** We do not give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, with respect to the supply by us of any goods or services in connection with these Terms or any Order, except as expressly stated in those agreements or as contemplated by clause 11 (as may be relevant).

10.4 **Aggregate liability:** Subject to clauses 10.3, 10.5 and 11 our aggregate liability for breach of and all liabilities under, in respect of and in connection with, these Terms or any Order as well as our duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis, is limited to the lesser of:

10.4.1 an amount equivalent to the value of the following remedy or amount, in the case of goods - the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and in the case of services - the supply of the services again or the payment of the cost of having the services supplied again; OR

10.4.2 10 x the Total Fee; OR

10.4.3 \$500,000.

10.5 **Consequential Loss:** In no circumstances will either party be liable to the other or its successors in title or permitted assignees for Consequential Loss arising out of, in connection with or relating to the performance, breach, termination or

non-observance of these Terms or any Order.

10.6 Liquidated damages and Indemnities: Notwithstanding any provision in any other agreements we enter into with you nor in relation to any Order, we will not be liable for any liquidated damages nor agree to indemnify you under any circumstances.

10.7 Security and retention: We will not provide monetary security and you are not entitled to withhold retention from payments.

11. STATUTORY RIGHTS

11.1 Statutory rights: Certain provisions of the *Competition and Consumer Act 2010* (Cth) (including, without limitation, the ACL) provide consumers (as that expression is used in the ACL) and others with certain rights (collectively, the **consumer guarantees**) in relation to goods or services purchased by consumers.

11.2 No restriction: Nothing in these Terms excludes, restricts or modifies any condition, warranty, consumer guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

11.3 Unfair contract: If section 23 of the ACL applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

12. SECURITY INTEREST

12.1 Security Agreement: You grant a security interest in all of your present and after acquired property and in all of your present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property, including any debts owed to you (**Collateral**) in our favour to secure the performance of your liabilities and obligations under the Order or these Terms or on any account whatsoever (**Security Interest**).

12.2 PPSA Definitions: For the purposes of this clause and other relevant clauses in these Terms, PPSA means the *Personal Property Securities Act 2009* (Cth) and 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.

12.3 Priority: You must not do or permit anything to be done that may result in the Security Interest ranking behind any other security interest.

12.4 Sections 115(1) and 115(7) of the PPSA: To the fullest extent permitted by the PPSA, you agree to contract out of the

application of the provisions listed in sections 115(1) and 115(7) and the sections listed therein shall not apply.

12.5 Ranking: Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.

12.6 Continuing obligation: This Security Interest is a continuing security and your obligations under this Security Agreement continue until it has been validly and fully terminated.

12.7 Perfection: You irrevocably give us authority to register a financing statement for the Security Interest on the PPSR. This clause does not prevent us from perfecting this Security Interest by any other means in accordance with the PPSA.

12.8 Information: You must provide us with any information required for us to register a financing statement or a financing change statement for this Security Interest on the PPSR.

12.9 Remedies: Until this Security Interest in the Collateral has been extinguished, if:

- 12.9.1 you experience a Default Event; or
- 12.9.2 you breach these Terms,

we may as we see fit and without notice to you, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity.

12.10 Costs: You must pay all costs incurred by us (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs regarding:

- 12.10.1 seizure, retention, redemption or any other remedy exercised pursuant to this Security Agreement; and
- 12.10.2 the enforcement of our rights under this Security Agreement (including matters incidental to it).

12.11 Extinguishment: The Security Interest is extinguished only if all obligations under this Security Agreement have been satisfied.

12.12 Waiver: Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on us.

12.13 Waiver of receipt of statements: You irrevocably waive your right to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time regarding this Security Agreement.

12.14 Disclosure: The parties agree that neither party may disclose information that:

- 12.14.1 can be requested under section 275(1) of the PPSA (subject to any

exceptions that may apply under section 275(7) of the PPSA); or

- 12.14.2 is protected against disclosure by a duty of confidence.

12.15 Acknowledgement: You acknowledge due notice of this Security Agreement with acceptance of these Terms.

13. TRUSTEE

13.1 If you are a trustee of a trust at the time of executing these Terms or any time thereafter (**Trust**), you warrant that:

- 13.1.1 you will deliver to us a stamped copy of the Trust deed (and any amendments thereto) upon our request;
- 13.1.2 you have full and valid power and authority to execute, or continue with your obligations under these Terms on behalf of the Trust;
- 13.1.3 these Terms bind you in your capacity as trustee of the Trust;
- 13.1.4 you have the right to be indemnified out of the assets of the Trust in accordance with the law of trusts and in accordance with the indemnity set out in the Trust deed;
- 13.1.5 you are not in breach of the terms of the Trust and the execution, delivery and performance of obligations and assumption of liability under these Terms will not cause you to be in breach of or default under the terms of the Trust;
- 13.1.6 you enter into these Terms for the proper administration of the Trust and for the benefit of all the beneficiaries of the Trust;
- 13.1.7 there has been no resolution or direction to remove you as trustee of the Trust; and
- 13.1.8 you are not aware of any action which has been taken to terminate or vest the Trust.

14. INTELLECTUAL PROPERTY

14.1 Our intellectual property: All of our Intellectual Property Rights in and relating to the production, development and supply of the Services and the Deliverables, including but not limited to proposals, tenders, surveys, reports, documents, estimates, schedules, drawings, illustrations, records, specifications, calculations, processes, designs, plans, data and other literature prepared by us in relation to the Services and the Deliverables (**Data**), remain our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent.

14.2 Licence: We grant you a revocable, personal, non-assignable, non-exclusive licence to use the Data for the Permitted

Purpose (**Licence**). The Data must not be transferred, assigned, sub-licensed, reproduced, disclosed or otherwise given to any third party without our prior written consent which may be withheld without us giving reasons. If you fail to make a Payment on time or are otherwise in breach of these Terms, we may revoke the Licence and you must return all documents referred to in clause 14.1 to us and all copies thereof. We may grant consent to disclosure to third parties subject to conditions, including but not limited to the payment to us of a fee by you.

14.3 **Moral Rights:** We retain the rights in all copyright work (whether or not currently in existence) in the Data and own all Moral Rights in any Data to which Moral Rights are attached to the fullest extent permitted by the *Copyright Act 1968* (Cth) and *Copyright Amendment (Moral Rights) Act 2000* (Cth) and any future Moral Rights in that Data.

14.4 **Confidentiality:** You must keep confidential and shall not use any of our confidential information without our prior written consent.

15. NON-SOLICITATION

15.1 You undertake (for valuable consideration received) that during the term of these Terms and for a period of 3 months following the termination or expiry of these Terms, you will not directly or by your agents or otherwise, induce or endeavour to induce any of our Survey Staff to leave his or her employment with us for employment with you or any third party (**Candidate**). In the event that you contravene this clause, you must pay us a fee equal to 20% of the annualised base gross salary of every applicable Candidate. For every applicable Candidate, the annualised base gross salary is to be calculated by multiplying the applicable normal hourly pay rate of the relevant Candidate by the usual minimum weekly number of hours worked by an equivalent permanent full time employee, multiplied by 52. For example, in respect of a Candidate whose normal hourly pay rate is \$40, the calculation of the non-solicitation fee would be as follows:

The percentage specified above x \$40 (being the normal hourly pay rate) x 38 (being the usual minimum weekly number of hours worked by a permanent full time employee) x 52 weeks.

This fee must be paid to us within 1 month of the appointment (or the appointment of any third party) of every applicable Candidate.

16. GST

16.1 **Prices exclusive of GST:** Unless otherwise expressly agreed in writing to the contrary, prices are exclusive of GST.

16.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Services and Deliverables.

16.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you. This tax invoice will also be a payment claim under the relevant state SOP Legislation.

16.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

17. INDEMNITY

17.1 **Indemnity:** You agree to indemnify and keep:

17.1.1 us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms; and

17.1.2 us, our directors, officers and employees indemnified against all Losses caused or contributed to by you or your personnel arising out of or in connection with:

(a) the personal injury or death to any person, or damage to or loss of any tangible property, to the extent in each case caused by you or your personnel;

(b) any damage to underground services not made known to us by you;

(c) any claim that a Deliverable or its use infringes, or the Services or their use infringe, the rights (including any Intellectual Property Rights) of any person;

(d) any breach of confidentiality obligations;

(e) any fraudulent or unlawful acts or omissions, or wilful breach (in each case) in the performance of the supply of Services and delivery of the Deliverables in accordance with these Terms, by you or your personnel;

(f) any failure by you or your personnel to comply with any industry workplace health and safety standards (in each case) in performance of your obligations under these Terms,

except to the extent that Losses are caused by or the claim arises as a result of:

(g) a negligent or fraudulent act or omission, default or neglect by us or our personnel.

18. TERMINATION

18.1 **Termination with cause:** If a Default Event occurs:

18.1.1 we may, without limiting any other right we have under these Terms, terminate immediately any Order and any contract for the supply of Services and Deliverables to you by notifying you in writing; and

18.1.2 all Payments and any other monies due under these Terms, including any monies that would ordinarily be payable at a date which falls after the date of termination, become immediately payable.

18.2 **Termination without cause:** We may terminate an Order at any time without cause by giving 7 days' written notice.

19. GENERAL

19.1 **SOP Legislation:** Both parties must observe and comply with the relevant security of payment law in the state in which the Services are supplied and Deliverables delivered.

19.2 **Insurance:** We will take out and maintain in force the following insurance policies:

19.2.1 public liability insurance;

19.2.2 insurance against liability which may arise under relevant workers or accident compensation legislation; and

19.3 professional indemnity insurance.

19.4 **Mitigation:** If a party suffers Losses in connection with these Terms for which the other party is liable (including under an indemnity), the party suffering the Losses must use reasonable endeavours to mitigate its loss.

19.5 **Granting of security interest to you:** We grant no security interest in your favour in relation to these Terms or any Order.

19.6 **Lawful purpose:** You must ensure any Data supplied by us is used only for lawful purposes and in accordance with applicable laws.

19.7 **Binding:** These Terms bind our successors, administrators and permitted assigns and your executors and permitted assigns or your successors, administrators and permitted assigns (as applicable).

19.8 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in

whole or in part) under these Terms. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms without our prior written consent.

19.9 **New Terms:** If we adopt new terms and conditions for the supply of Services:

19.9.1 you will be given written notice; and

19.9.2 they will apply to the subsequent supply of the Deliverables.

19.10 **Variation of Terms by us:** If we need to vary these Terms, we will notify you in writing and obtain your written agreement to the variation.

19.11 **Variation of Terms by you:** You may not vary these Terms without our prior approval in writing signed by an authorised representative of ESO Surveyors. Variation charges may apply for any meetings, briefings, calculations, plan checking, field survey work, quality assurance checks and processes, plans and/or sketches, delivery of survey data, filings and site visits.

19.12 **Force Majeure:** If a Force Majeure Event occurs, we may:

19.12.1 totally or partially suspend the Services to be provided pursuant to any Order or any supply of Deliverables during any period in which we may be hindered due to that Force Majeure Event; and

19.12.2 elect to extend at our discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances.

19.13 **Severability:** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

19.14 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

19.15 **Dispute Resolution:** If a dispute arises between the parties:

19.15.1 the parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution;

19.15.2 the dispute must be referred to a senior representative of each party by written notice giving full particulars of the nature and extent of the dispute; and

19.15.3 and has not been resolved within 10 days of a referral in accordance with clause 19.15.1-19.15.2 either party may commence legal proceedings.

19.16 **Continuation of obligations:** Despite the existence of a dispute, the parties must continue to perform their respective obligations under these Terms.

19.17 **Urgent relief:** Nothing in clause 19 will preclude either party from applying to a court to seek urgent relief.

19.18 **Governing law:** These Terms shall be governed by the laws of the state in which the Services are supplied and Deliverables delivered and the parties irrevocably submit to the non-exclusive jurisdiction of that state.

20. INTERPRETATION + DEFINITIONS

20.1 **Personal pronouns:** Except where the context otherwise provides or requires:

20.1.1 the terms **we, us** or **our** refers to **ESO Surveyors**; and

20.1.2 the terms **you** or **your** refers to any person or entity that places an Order with us and agrees (by conduct, notice or otherwise) to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.

20.2 **Defined terms:** In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth) as amended and other relevant State laws in Australia.

Charges means any sales tax, excise duties, customs duty, transfer duty, duties or charges applicable in respect of the provision of the Services and Deliverables.

Commencement Date means the date we commence the provision of the Services in accordance with any Order.

Consequential Loss means any Losses suffered by a party to this agreement as a result of a breach of this agreement that cannot reasonably be considered to arise naturally from that breach including but not limited to loss of profits, revenue, loss or corruption of data, goodwill, bargain, opportunities and loss of anticipated savings however and whenever occurring.

Default Event means any one of the following events:

(a) you fail to make any payment when due, whether for the Services and Deliverables or otherwise; or

(b) an Insolvency Event.

Default Interest means as defined in clause 7.

Deliverable means any survey data, plans, reports, documentation or other material in whatever form as stated in an Order or SOW.

Delivery means the delivery of the Services and Deliverables in accordance with these Terms.

ESO Surveyors means Engineering Setout Pty. Ltd (ACN 003 992 078) of C/-Nexia Level 3, 88 William Street, Perth, Western Australia 6000.

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, pandemics, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, or instructions or lack of instructions from you.

GST and GST Law mean as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Services and Deliverables specified in your Order.

Insolvency Event means:

(a) for a person in Australia, where one or more of the following events occurs:

(i) a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation);

(ii) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all of the property of that person;

(iii) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all of the business or assets of that person;

(iv) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;

(v) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;

(vi) that person ceases, or threatens to cease to carry on its business; or

(vii) that person becomes insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth); or

(b) for a person in any other jurisdiction, that any event analogous or equivalent to the events described in paragraph (a) occurs in respect of that person.

Losses means all losses, liabilities, fines, penalties, damages, claims and interest, and all related costs and expenses (including any and all legal costs (on a full indemnity basis), and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Order means an order received by us from you in writing for Deliverables in any of the following forms:

- (a) an email; or
- (b) a purchase order

which may or may not include a SOW.

Moral Rights has the meaning given in the Copyright Act 1968 (Cth), as amended or replaced from time to time.

Payment means payment of any amount relating to Goods or Services in accordance with these Terms.

Permitted Purpose means the purpose of completing the project for which the Deliverables are necessary.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Project Site means the site specified in the Order at which the Services are to be performed.

Quote means a quotation by us for the supply of particular Services and Deliverables containing details as specified in clause 2.2.

Reimbursable Expenses means expenses that may be incurred by us in delivering the Services and Deliverables for which you must pay us back including but not limited to air travel and freight, accommodation, title and survey searching fees, data licence fees, printing and photocopying, survey consumables such as pegs and paint.

Security Agreement means the security agreement set out in clause 12 (*Security Interest*).

Services mean the services we provide from time to time, including the supply of

surveyors with cars and standard or specialised surveying equipment charged at the applicable hourly rate or at a fixed price as agreed by the parties in an Order in relation to:

- (a) infrastructure construction projects;
- (b) building construction projects;
- (c) residential, commercial and industrial development projects;
- (d) survey control networks;
- (e) laser scanning surveys;
- (f) UAV drone surveys,

and any other services we may provide from time to time.

SOP Legislation means the SOP legislation of the state in which the Services are supplied and Deliverables delivered.

SOW or Scope of Work means a document setting out specific Services and Deliverables as agreed between the parties.

Term means from the date you submit an Order until the date of completion of supply of all Services and delivery of all Deliverables stated in an Order.

Total Fee means the total amount payable for the Services and Deliverables provided in accordance with the relevant Quote.