

**STANDARD TERMS AND CONDITIONS**

**1 General**

- 1.1 These terms and conditions ("Terms") plus any implied terms which cannot be excluded and the terms (if any) on our quote, invoice, and/or Credit Account are the whole agreement between you and us and we will not be bound by any representation made by us or by our servants, agents or employees outside of this agreement. No other contractual terms you provide (such as on a purchase order or otherwise) apply and, if provided, they don't constitute a counter-offer.
- 1.2 If you place an order with us or otherwise accept supply of all or a portion of the Services supplied under these Terms, you will be deemed to have accepted these Terms and they will apply to the exclusion of all others.
- 1.3 We may vary these terms by providing written notice to you (by email, conventional mail or by posting the amended terms on our website). We will not change any Terms for an existing order that has been accepted by us; the Terms that apply to the order are the Terms that applied at the time you placed the order.

**2 Definitions**

**Credit Account** means the commercial credit.

**Docket Book** means the docket book, including each individual hire docket within the docket book, supplied by us (through a Sub-contractor or employee) to verify that the Sub-contractor or employee attended your site and rendered the Services to you.

**Material** means material excavated on your behalf, material removed from your site with or without us performing the excavation and material supplied by us to you (whether that material is sourced by us or a third party) including soil, compost, organic matter and quarry products, whether such material is clean fill, fill material, contaminated material or compactible material.

**Operator** means any drivers or operators of the Plant, whether they are employed by us or are a Sub-contractor.

**Plant** means any plant and equipment supplied to you by us or used by us in supplying Services to you, including but not limited to excavation machinery, trucks, trailers and any associated plant or equipment.

**Services** means any services we supply to you from time to time, whether directly or through our Sub-contractors, including but not limited to the hire of Plant (whether Wet Hire or Dry Hire), excavation or removal of Material, supply of Material, carting and tipping of Material, disposal of Material, re-use of Material, booking services, project management services or transportation of Machinery on our Plant (also known as "float shifts/logistics").

**Sub-contractor** means a person we have engaged to provide Services to you.

**We/Us/Our** means Redgate Lime & Earthmoving ABN 55 745 115 870 and entities that are related to them in the provision of the Services, as applicable.

**Wet Hire** means the hire of Plant with an Operator.

**You/Your** means the person, firm, organisation, partnership, corporation, trust or other entity named in the Credit Account (if we extend credit to you), the Docket Book, an invoice, order or quotation. The reference to you also includes your employees, agents and contractors, corporation or your related entities.

**3 Credit Terms**

- 3.1 We reserve the right to require a deposit prior to performing the Services.
- 3.2 If we do not extend credit to you:
  - 3.2.1 payment for the Services must either be made in advance or is due as soon as the Services have been completed, as specified by us; and
- 3.3 If we do extend credit to you, payment is due on or prior to the time period specified in the invoice or if there is no time period specified in the invoice, fourteen (14) days from the date of the invoice, unless we tell you in writing otherwise.

- 3.4 If you pay by cheque, the payment is deemed to be made when proceeds of the cheque have cleared.
- 3.5 When making payment, you are not allowed to make any setoff or deduction against any money owing to us on amounts owed to you by us.
- 3.6 If we don't receive payment on the due date, we may:
  - 3.6.1 charge interest (as liquidated damages) at the rate of two percent (2%) above the rate of interest fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983; charge an administration & overdue fee of \$20.00 and
  - 3.6.2 suspend or discontinue supply of the Services to you and/or suspend or cancel your account with us.
- 3.7 We may revoke or amend our express or implied approval for giving you credit at any time.
- 3.8 We can set-off against any money owing to you amounts owed to us by you on any account whatsoever.
- 3.9 Any payments received from you on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs, and then to principal.
- 3.10 You are liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by us for enforcement of obligations and recovery of monies due from you to us.
- 3.11 All sums outstanding become immediately due and payable by you to us if you make default in paying any sums due to us, you become bankrupt or commit any act of bankruptcy, compound with your creditors, have judgment entered against you in any court or, being a company, have a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.

**4 Pricing**

- 4.1 The prices we charge for our Services will vary depending on the type of Services you have ordered. We reserve the right to change our prices, even after an order has been accepted, due to poor weather conditions at the time the Services are supplied, the amount of Material excavated or supplied, the tipping conditions and other circumstances that are otherwise outside our control. Our prices may be based on time, cartage or disposal or another measure. We are not bound to charge the rates specified in any price guide made available by us to you.
- 4.2 In addition to or as part of the price specified by us for our Services, we may charge you for any of the following (in our absolute discretion):
  - 4.2.1 Travel or float/logistics fees.
  - 4.2.2 Any fines, penalties or other charges incurred by us.
  - 4.2.3 Fuel and other consumables supplied by us to you (for Wet or Dry Hire).
  - 4.2.4 Operating costs of the Plant incurred by us.
- 4.3 Except if we are supplying Material to you, you are responsible for ensuring the accuracy of any specifications for the Material, including the type, character, or composition of the Material ("Specifications"). We are not liable for any error in these Specifications and may increase the price if you have not accurately advised us of these Specifications.

**5 Quotations**

- 5.1 A quotation shall not constitute an offer and will remain valid only for 30 days from the date of the quotation unless we tell you in writing otherwise. A quotation is subject to variation without notice to you or may be withdrawn prior to your acceptance of the quotation. If we give you a quote verbally, it must be confirmed in writing by us and otherwise will not be valid.
- 5.2 Prices in quotations don't include (unless specified) any statutory tax, including but not limited to any GST levied in respect of the Services and not allowed for by us in calculating the price. If applicable such costs shall be in addition to the quotation and paid for by you. If quote needs to be revised due to change of plans once issued, this will be an additional charge per change.
- 5.3 Unless otherwise specified, prices for the Services include the cost of the Plant hire, provision of Operators and the supply or removal of Material (as applicable).

- 5.4 All orders must be in writing. If you place an order with us for our Services, it constitutes an unconditional offer to us which we may accept by written confirmation, in our absolute discretion. Each order that we accept will form a separate contract between you and us.
- 6 Additional Terms**
- 6.1 Any additional terms referred to in our price guide or quotation will apply to the provision of Services in addition to these Terms.
- 6.2 In the event of a conflict between terms in our price guide, the terms in the price guide or quotation will apply in precedence to these Terms if there is a conflict between those terms and these Terms.
- 7 Delivery and Supply**
- 7.1 To the extent permissible by law, we shall not be liable for failure to supply the Services, or for delay in supply of the Services. If we quote a time for supply, it's an estimate only. You will not be relieved of any obligation to accept or pay for our Services because of any failure to supply at the time specified. We can stop supply of the Services if you fail to comply with these Terms.
- 7.2 We may refuse to provide our Services in our absolute discretion and may make acceptance of any further Services conditional upon receiving a satisfactory credit assessment from you or any guarantor.
- 7.3 If you fail or refuse to accept our services in relation to Material (including collecting, removal, carting, or disposal of Material) or we are unable to perform such Services and we are not at fault, you must meet all our costs for storing, handling, returning and/or re-delivering the Material.
- 8 Cancellations**
- 8.1 We will not accept variations, cancellations, or partial cancellations of an order unless we have first consented in writing, which consent may be withheld in our absolute discretion.
- 8.2 If we accept your request and the order is varied or cancelled, we reserve the right to charge you for all Services already rendered and charge you a cancellation fee which, as determined by us, will indemnify us against all direct loss and expense as a result of the variation or cancellation. We may make the acceptance of the cancellation conditional upon payment of Services rendered to date and the cancellation fee.
- 8.3 If we accept the cancellation or variation, we may issue a credit note or grant you a refund (if applicable), in our absolute discretion. You must not deduct the amount of any anticipated credit from any payment due to us.
- 8.4 Subject to clause 19, if causes beyond our control render it impossible for us to render the Services to you within the time you have stipulated, we reserve the right to extend the date of completion or cancel the order.
- 9 Claims**
- 9.1 If you wish to make a claim or complaint in relation to an invoice, you must make your request in writing within seven (7) days of the date of the invoice. If you do not make a claim or complaint within seven (7) days, you are deemed to accept the invoice. We may issue you with a credit note or refund, in our absolute discretion. You must not deduct the amount of any anticipated credit from any payment due to us.
- 9.2 If you wish to make a claim or complaint in relation to the Services, you must provide us with written notice of your claim or complaint within two (2) days of the Services being provided to you. If you do not make a claim or complaint within two (2) days, you are deemed to accept the Services.
- 10 Warranties**
- 10.1 No warranties except those implied and that by law cannot be excluded are given by us in respect of Plant or Services supplied. Where it is lawful to do so, our liability for a breach of a condition or warranty is limited to:
- 10.1.1 the repair or replacement of the Plant or the supply of substitute Plant (or the cost of doing so); or
- 10.1.2 in the case of Services, the resupply of Services, or the payment of the cost of resupplying the Services.
- 10.2 You acknowledge and warrant that you have relied on your own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by you to provide advice and assistance on the suitability of the Plant or the Services for specific purposes and procedures and, in this respect, you shall indemnify us from and against any suit, claim, demand or compensation which, but for these Terms, you may have had against us.
- 11 Indemnities and exclusions of liability**
- 11.1 To the extent permissible by law, we are not liable for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business or any loss suffered by third parties arising or relating to Terms, whether arising in contract, tort, in equity, under statute, under an indemnity, whether or not such loss was foreseeable, and even if we are advised of the possibility of such loss or damage.
- 11.2 In respect of a Wet Hire arrangement, we are not liable for any losses, damages or expenses incurred by you or any third party howsoever caused in relation to any directions or instructions given by you to the Operator whilst the Operator is under your control or direction.
- 11.3 You indemnify us against all liability, claims, damage, loss, costs, and expenses (including but not limited to, legal fees, costs and disbursements on a full indemnity basis) ("Loss") from your use of the Plant in respect of:
- 11.3.1 personal injury;
- 11.3.2 damage to tangible property; or
- 11.3.3 a claim by a third party,
- except and only to the extent of any Loss caused or contributed to by our gross negligence or wilful default.
- 11.4 Each indemnity in clause 11.3 is a separate, independent, and continuing obligation which survives termination of these Terms.
- 12 Non-Solicitation of Employees**
- You agree not to employ, contract, subcontract or utilise in any way, an employee, Sub-contractor, past employee, or past Sub-contractor for a period of no more than 12 months after that employee or Sub-contractor's last employment with us.
- 13 Personal Property Security Interest**
- 13.1 You acknowledge that these Terms may be deemed to be a PPS Lease under the Personal Property Security Act 2009 (Cth) ("PPSA") and that we may register a security interest on the Personal Property Security Register against you to protect our interest under this agreement between you and us.
- 13.2 You grant us a security interest in all your present and after acquired personal property to the extent required to secure your obligation to us to pay the price of the Services and the other of your obligations to us under this agreement.
- 13.3 You waive any right to receive notice in relation to any registration or amendment to a registration on the Personal Property Security Register ("PPSR"). At your own expense, you will provide all reasonable assistance and relevant information to enable us to register on the PPSR and generally to obtain, maintain, register, and enforce the security interests created by these Terms.
- 13.4 Any payments received from you shall be deemed to be made and applied by us in the following order (unless we otherwise determine): (1) to any obligation owed by you which is unsecured, in the order in which the obligations were incurred; (2) to any obligations that are secured, in the order in which those obligations were incurred.
- 13.5 To the extent permissible by law, you agree that the following provisions of the PPSA will not apply and you will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notice to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143.
- 13.6 Section 115(7) of the PPSA allows for the contracting out of provision of the PPSA, the following provisions of the PPSA will not apply and you will not have any rights under them: section 127; section 129(2),(3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

- 13.7 Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. You waive any right you may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
- 14 Charges for Waiting Time**
- 14.1 In respect of contract cartage Services, we reserve the right to charge for any waiting time as outlined in this clause.
- 14.2 We will charge for waiting time if we (whether through our employees or our Sub-contractors) are delayed from performing the Services for a period of at least 30 minutes in circumstances where the delay is not our fault and the delay is not due to poor weather.
- 14.3 We will charge for waiting time if you are aware of a delay that will prevent us from performing the Services and you do not provide us with at least 2 hours written notice of the delay before the estimated start time.
- 14.4 The charge payable for waiting time under this clause will be calculated at a rate equal to the applicable hourly rate of the relevant Operator multiplied by the time of the delay.
- 14.5 Notwithstanding anything in this clause 18, we are still entitled to charge minimum hire charges (if applicable).
- 15 Material**
- 15.1 We do not accept any liability, risk, or ownership of Material, even where the Material is sourced by us. Instead, you accept all liability and risk in relation to the Material.
- 15.2 You are responsible for meeting any extra costs or risks incurred by us for any and all damage in relation to the Material, except and only to the extent of any damage caused or contributed to by our gross negligence or wilful default.
- 15.3 You warrant to us that you are the owner of all Material that we collect from you or deliver to you and that you are authorised to request Services from us in relation to that Material.
- 15.4 You further acknowledge and warrant that:
- 15.4.1 All Material classified as clean fill or fill material complies with the applicable environmental laws relating to clean fill material.
- 15.4.2 All information disclosed to us by you in relation to the Specifications of the Material is correct and accurate and you have no reason to believe it is not true or inaccurate.
- 15.5 If you have any concerns about the Material, you must advise us of the concerns prior to us collecting the Material from you or delivering it to you.
- 15.6 You must satisfy yourself that the Material meets your Specifications before we collect it from you or deliver it to you. Otherwise, once we have collected the Material from you or delivered it to you, you are deemed to be satisfied with the Material and warrant that it meets your Specifications.
- 15.7 You warrant to us that the Material is not contaminated and that it meets your Specifications. Alternatively, if you conduct an environmental site assessment and provide us with the results then we will rely on the results of the environmental site assessment instead.
- 15.8 If the Material is contaminated and you have not provided us with the results of any environmental site assessment, then you must indemnify us from any loss or damage suffered by us (including Sub-contractors) or third parties as a result of the Material being contaminated.
- 15.9 You must meet all our costs for storing, handling, redelivering and/or returning the Material if the Material is contaminated or does not meet your Specifications and you reject the Material when it is delivered to your site.
- 15.10 If the Material has been mixed with any waste material, contains material of uncertain or unknown origin, originates from sites where the previous use of the site was industrial, commercial, mining, or agricultural activities, had manufactured chemicals applied to the Material or was located in a fire ant zone, then the Material will be deemed to be contaminated or potentially contaminated.
- 15.11 If we deem that the Material is contaminated, we are entitled to manage the material according to the applicable environmental or waste-related legislation in the relevant State or Territory, at your cost.
- 15.12 You indemnify and hold us harmless in relation to all costs, liabilities, and expenses in relation to any breach of the warranties given in this clause by you.
- 15.13 We may refuse to supply Services to you, without incurring any liability, if we suspect on reasonable grounds that you have breached the warranties given in this clause.
- 16 Site Requirements**
- 16.1 You must provide adequate supervision and site-specific induction of our Operators, through on-site staff or contractors who have the requisite knowledge and qualifications to provide such training and supervision. You are responsible for ensuring that our Operators are safely directed in relation to their conduct on your site including but not limited to loading and unloading Material and performing any other Services for you.
- 16.2 You must prepare risk assessments and safe work method statements for all Services that we provide to your sites.
- 16.3 If your staff or contractors approve changes to pricing or Material Specifications, they will be deemed to be your agent and authorised by you to give such approval unless you advise us otherwise in writing.
- 16.4 You accept all risk, liability, and responsibility in relation to all your sites. We do not accept any risk or liability in relation to your sites.
- 16.5 You acknowledge and warrant that all your sites we provide Services to, are compliant with all relevant legislation and regulations including occupational health and safety law.
- 16.6 You must ensure that your sites are safe and clean, and to this end you must remove any debris as necessary, so that we can perform our Services.
- 16.7 You must not give our Operators any unlawful or unreasonable directions, including directing the Material to be carried in a way that breaches any statutory transport limit or road rules. Our Operators are entitled to refuse to follow such directions, if given.
- 16.8 You must provide us with adequate access and egress to and from your site.
- 16.9 You acknowledge and warrant that you have advised us of the exact location of all overhead structures and all underground services on the site and that such services are clearly marked. The underground services include but is not limited to, electrical, gas, sewer, pumping services, sewer mains, irrigation pipes, telephone cables, fibre optic cables and any other services on the site.
- 16.10 You indemnify and hold us harmless in relation to all costs, liabilities, and expenses in relation to any breach of the warranty, including but not limited to any costs incurred by us for any damage to a service that you did not advise us of.
- 17 Preliminary Site Investigation**
- 17.1 We may require that you conduct a preliminary site investigation ("PSI") for any of your sites. If we direct you to conduct a PSI, you must conduct a PSI and provide us with the results. As part of the PSI, we may ask you to provide us with investigation reports, soil reports, Material condition reports, a history of the site, a history of the Material or analysis of the Material including technical reports and reports of contaminants or potential contaminants.
- 17.2 We are entitled to rely on the PSI in providing our Services to you. You acknowledge and warrant to us that the information in any PSI is accurate and complete. You agree to indemnify us from any loss or damage resulting from inaccuracies or errors in any PSI supplied by you to us.
- 18 Float Shifts/Logistics**
- 18.1 The terms and conditions in this clause only apply for Services involving transportation of Machinery on our Plant (also known as "float shifts/logistics").
- 18.2 If the time taken to load the Machinery (load time) exceeds 30 minutes, we are entitled to charge for the additional time taken at the applicable hourly rate.

- 18.3 You must provide us with safe and adequate access and egress to and from your site. If the Operators cannot access the site safely, then the Machinery will not be collected, and the minimum hire charge will apply.
- 18.4 We reserve the right to charge extra for oversized Machinery (exceeding ordinary load dimensions) and for Machinery with curfews or other requirements imposed on it by governmental or regulatory authorities.
- 18.5 We reserve the right to impose a surcharge on the rate payable as follows, if you require our Services:
- 18.5.1 on Saturdays from 12:00 pm to 11:59 pm – 20% surcharge;
  - 18.5.2 on Sundays from 12:00 am to 11:59 pm – 50% surcharge;
  - 18.5.3 outside of ordinary work hours (Monday to Sunday between 5:00 pm and 7:00 am) – 20% surcharge.
- 18.6 To avoid doubt, the surcharge rates are cumulative and may overlap, for example where Services are rendered on a Saturday between 4:00 pm and 11:59 pm, the applicable surcharge will be 40%.
- 18.7 Where we charge an hourly rate for rendering the float shifts Services, time is charged depot to depot.
- 18.8 We are not common carriers and we do not cart dangerous goods.
- 18.9 During the Services being rendered (including loading, unloading or transportation of the Machinery), we are not responsible or liable for any loss or damage to:
- 18.9.1 footpaths, crossovers, kerbs, roads, underground services, or above-ground services; or
  - 18.9.2 the Machinery, except and only to the extent of any loss or damage caused or contributed to by our gross negligence or wilful default.
- 18.10 We are not liable for any loss, damage or expense incurred by you or any third party howsoever caused in relation to any directions or instructions given by you to the Operator whilst the Operator is under your control or direction, and you agree to indemnify us from the same.

## 19 Route and Method for Cartage

In relation to our cartage and disposal Services, we are entitled to determine, in our absolute discretion, the route for cartage of the Material and the method of handling the Material. If you request a specific route for cartage of the Material, we will charge you extra for the cost of taking the different route.

## 20 Notification

You must notify us in writing within seven (7) days of: (1) Any alteration of your name or ownership; (2) the issue of any legal proceedings against you; (3) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to you; and (4) Any change in the ownership of your business name. You agree that you shall be liable to us for all Services supplied to the new owner by us until notice of any such change is received.

## 21 Force Majeure

We shall be released from our obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Services impossible, where all money due to us shall be paid immediately and, unless prohibited by law, we may elect to terminate the agreement between you and us.

## 22 Equitable Charge

You as beneficial owner and/or registered proprietor now charge in favour of us all of your estate and interest in any real property (including but not limited to any applicable land owned by you and, if applicable, land described as your Street Address in the Credit Account) ('Land') to secure payment of accounts rendered by us to you for the delivery and/or supply of the Services including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by us and including the costs to prepare and lodge a caveat against the Land and to remove the caveat.

## 23 Legal Construction

- 23.1 These Terms shall be governed by and interpreted according to the laws of Victoria and the parties consent and submit to the jurisdiction of the Courts of Western Australia.
- 23.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

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