

JMS Site Services Terms and Conditions

1. Definitions

“JMS” means JMS Site Services Pty Ltd, trading as JMS Rural Services, its successors and assigns or any person acting on behalf of and with the authority of JMS Site Services. “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one, Client is a reference to each Client jointly and severally. “Goods” means all Goods or Services supplied by JMS to the client at the client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other). “Price means the Price payable for the Goods as agreed between JMS and the Client in accordance with clause 4 below.

2. Acceptance

The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditioned if the Client places and order for or accepts delivery of the Goods. These terms and conditions may only be amended with JMS’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and JMS.

3. Terms of quote acceptance

JMS requires 50% deposit upon acceptance of the Clients quote unless an agreement in writing has been reached between the Client and JMS. The remainder of the quoted amount must be paid as stated in clause 4.

Allowances not included in quote are:

- a) Excavating through rock or shale
- b) Access permits, authorisation from government bodies
- c) Critical Gas safety observer
- d) Access to unauthorised communication
- e) Supply and fixing of shoring and benching/stepping
- f) Any obstructions encountered in area of excavation/fence alignment
- g) Waiting time and/or delays outside of JMS Site Services control
- h) Work not informed of at tender time
- i) Dumping of vegetation, rubbish or material
- j) Underground water/seepage
- k) Surveying of boundary or fence alignment
- l) Demolition of fence, structures etc. unless specified
- m) Hand excavation

n) Inclement weather.

4. Payment Obligation

JMS requires 50% deposit upon acceptance of Client’s quote. The remaining 50% is to be paid prior to work commencing. Any payment plans, or other financial arrangements must be made prior to work commencing and at time of quoting, and in writing with agreement from JMS. All overdue invoices will incur a 15% late fee once seven (7) days from the original invoice due date has passed.

JMS holds the right to apply a late fee for every seven (7) days the invoice has remained unpaid, unless agree upon in writing by Client and JMS.

5. Price

- at JMS’ sole discretion to the price shall be either:
- a) as indicated on any invoice provided by JMS to the client; or
 - b) the Price as at the date of delivery of the Goods according to JMS’ current price list; or
 - c) JMS’ quoted price which will be valid for the period stated in the quotation or otherwise for a period of (14) days. JMS reserves the right to change the price if a variation to JMS’ quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety consideration, prerequisite work by any third party not being completed or as a result of any increase to JMS in the cost of fuel, materials, labour and or running costs) will be charged for on the basis of JMS quotation and will be shown in variations on the invoice. Payment for all variations must be made in full at their time of completion. At JMS’ sole discretion, a deposit may be required. Time for payment for the goods being of the essence, the Price will be payable by the client on the date/s determined by JMS which may be:
 - a) on delivery of the Goods;
 - b) by way of instalments/progress payments in accordance with JMS’ payment schedule;
 - c) the date specified on any invoice or other form as being the date for payment’ or
 - d) failing the notice to the contrary, that date which is seven (7) days following the date of any invoice given to the Client by JMS. Payment may be made by cash, electronic/online banking, credit card

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inclusive of any transaction surcharges, or by any other method as agreed to between the client and JMS. All JMS invoices include GST

The Client who engaged JMS to carry out works is solely responsible for full payment of the invoice. Any cost sharing is the responsibility of the Client. JMS will not issue split invoices, nor share costs over multiple Clients. JMS does not accept any third-party payments. The Client that engaged JMS is legally responsible for all cost, unless agreed upon at time of quotation and in writing between JMS and Client.

6. Delivery of Goods

Delivery ("Delivery") of the Goods is taken to occur at the time:

- a) The Client or the Client's nominated carrier takes possession of the Goods at JMS' address; or
- b) JMS (or JMS' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address. At JMS' sole discretion the cost of the delivery is in addition to the Price. The Client must take delivery by receipt or collection of the Goods wherever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged, then JMS shall be entitled to charge a reasonable fee for redelivery and/or storage. JMS may deliver the Goods in separate instalment. Each separate instalment shall be invoiced and paid in accordance with provisions in these terms and conditions. Any time or date Given by JMS to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and JMS will not be liable for any loss or damage incurred by the Client as a result of delivery being late.

7. Change in Control

The Client shall give JMS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by JMS as a result of the Client's failure to comply with the clause.

8. Risk

Risk or damage or loss of the Goods passes to the Client on Delivery, and the Client must insure the Goods on or before Delivery. If any of the Goods

are damaged or destroyed following delivery but prior to ownership passing to the Client, JMS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by JMS is sufficient evidence of JMS' rights to receive the insurance process without the need for any person dealing with JMS to make further enquiries. If the Client requests JMS to leave Goods outside JMS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk, Where the Client is to supply JMS with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. JMS shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client. Where JMS is instructed to manufacture custom Goods on behalf of the Client, the Client shall be responsible for the suitability of the design. All custom-made Goods will not be subject to return or credit. Where the Client has supplied materials for JMS to complete the works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the materials. JMS shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

9. Fencing risk

The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs. If the Client fails to comply with this clause, then JMS accepts no responsibility for installation decisions that need to be made by JMS in the Client's absence. The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow JMS clear access along the proposed fence line prior to commencement of work by JMS unless otherwise agreed in writing between JMS and the Client. Under no circumstances will JMS handle removal of asbestos product. Whilst JMS will take all due care during installation JMS will not accept any responsibility for tiles or pavers damaged during installation. Where fencing is installed on a retaining wall, JMS shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall. JMS shall not be responsible

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for digging land out under fence lines nor removal of soil from the worksite. JMS reserves the right to touch-up all products supplied and installed on the worksite to rectify minor blemishes or damage to paintwork.

10. Material Risk

The timber used by JMS are natural products that consist of naturally occurring and unique impurities. Knots, grains, cracks, shape, size and colouring inconsistencies. Whilst JMS conducts quality control over the materials used, any natural impurities in timber is not covered by JMS. Material maintenance such as oiling, etc is the responsibility of Client as state in Clause 11.

11. Material Maintenance

The Client is responsible for maintaining any upkeep regarding the materials they have selected as per manufacturers guidelines. The client is responsible for researching and evaluating any materials quoted. JMS has uploaded a Safety Data Sheet (SDS) as well as the manufacturers guidelines for the materials commonly used to the website for Clients to download and read should they feel the need.

12. Access

The Client shall ensure that JMS has always clear and free access to the worksite to enable them to undertake the works. JMS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of JMS. The Client is responsible for arranging any access needed via neighbouring properties.

13. Council Approval

It is the sole responsibility of the client to obtain any required council approval before JMS begins work. Approval must be submitted to JMS before works can be scheduled. Failure to do so may result in work being cancelled at the expense of the Client including any material and labour costing.

14. Underground Locations

Unless otherwise agreed in writing between the Client and JMS, it shall be the Clients responsibility to advise the precise location of the underground services on the site and clearly mark the same prior to commencing any works.

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, telephone cables, fibreoptic cables, oil pumping mains, and any other services that may be on site. Whilst JMS will take all care to avoid damage to any underground services the Client agrees to indemnify JMS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located. If the structure JMS is building is in an area deemed worthy of locating, JMS will use an asset locator to locate assets and reserve the right to amend the invoice to reflect the cost. All jobs scheduled by JMS will be run through a dial before you dig program. Should JMS find any assets whilst on site that is not in the dial before you dig survey, nor has been located by a locator or Client, JMS reserves the right to on charge any repair costs to the Client including labour and materials. If the Client chooses to mark out assets themselves rather than have a locator, it is the sole responsibility of the Client to pay for any damages to their property, JMS equipment and if injury occurs, the liability falls on the Client.

15. Concrete Risk

The Client acknowledges that variations of colour and texture are inherent in concrete. JMS shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product. Detailed drawings of any services that will be embedded in the concrete are to be provided to JMS prior to commencement of any works. Whilst all due care will be taken no liability will be accepted by JMS for damage to the services or any other element embedded in the concrete. The Client acknowledges that the curing time for concrete can be affected by elements such as temperature or the weather as such JMS offers no guarantee as to the length of time the curing process will take. JMS offers no guarantee against cracking of concrete.

16. Cancellation

JMS 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. JMS shall not be liable for any loss or damage

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whatsoever arising from such cancellation. In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by JMS as a direct result of the cancellation (including, but not limited to, any loss of profits). Cancellation and/or refunds of orders for Goods made to the Client's specifications, or for non-stock list items, will not be accepted once production has commenced, or an order has been placed.

17. Title

JMS and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid JMS all amounts owing to JMS; and
- (b) the Client has met all of its other obligations to JMS.
- (c) Receipt by JMS 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. It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to JMS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for JMS and must pay to JMS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for JMS and must pay or deliver the proceeds to JMS on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of JMS and must sell, dispose of or return the resulting product to JMS as it so directs.
 - (e) the Client irrevocably authorises JMS to enter any premises where JMS believes the Goods are kept and recover possession of the Goods.
 - (f) JMS may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor

otherwise giveaway any interest in the Goods while they remain the property of JMS.

- (h) JMS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

18. Personal Property Securities Act 2009 ("PPSA")

In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by JMS to the Client. The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which JMS may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA ;or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
- (b) indemnify, and upon demand reimburse, JMS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of JMS;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of JMS;
- (e) immediately advise JMS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales. JMS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. The

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Client waives their rights to receive notices under sections 95, 118, 121 (4), 130, 132(3) (d) and 132(4) of the PPSA. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

Unless otherwise agreed to in writing by JMS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA. The Client must unconditionally ratify any actions taken by JMS under clauses 12.3 to 12.5. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

19. Security and Charge

Security and Charge In consideration of JMS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The Client indemnifies JMS from and against all JMS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising JMS' rights under this clause. The Client irrevocably appoints JMS and each director of JMS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

20. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify JMS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow JMS to inspect the Goods. Under applicable State, Territory and

Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) maybe implied into these terms and conditions (Non-Excluded Guarantees). JMS acknowledges that nothing in these terms and conditions purports to modify or exclude the non-Excluded Guarantees. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, JMS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. JMS' liability in respect of these warranties is limited to the fullest extent permitted by law. If the Client is a consumer within the meaning of the CCA, JMS' liability is limited to the extent permitted by section 64A of Schedule 2. If JMS is required to replace the Goods under this clause or the CCA, but is unable to do so, JMS may refund any money the Client has paid for the Goods. If the Client is not a consumer within the meaning of the CCA, JMS' liability for any defect or damage in the Goods is:

- a) Limited to the value of any express warranty or warranty card provided to the Client by JMS at JMS' sole discretion;
- b) Limited to any warranty to which JMS is entitled, if JMS did not manufacture the Goods;
- c) Otherwise negated absolutely. Subject to this clause 14, returns will only be accepted provided that:
- d) The Client has complied with the provisions of clause 14.1; and
- e) JMS has agreed that the Goods are defective; and
- f) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- g) the Goods are returned in as close a condition to that in which they were delivered as is possible.

Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, JMS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- a) the Client failing to properly maintain or store any Goods;
- b) the Client using the Goods for any purpose other than that for which they were designed;
- c) the Client continuing the use of any Goods after any defect became apparent or should have

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- become apparent to a reasonably prudent operator or user;
- d) the Client failing to follow any instructions or guidelines provided by JMS;
 - e) fair wear and tear, any accident, or act of God. Notwithstanding anything contained in this clause if JMS is required by a law to accept a return then JMS will only accept a return on the conditions imposed by that law.

21. Intellectual Property

Where JMS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of JMS. The Client warrants that all designs, specifications or instructions given to JMS will not cause JMS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify JMS against any action taken by a third party against JMS in respect of any such infringement. The Client agrees that JMS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which JMS has created for the Client.

22. Default and Consequences of Default

If the Client owes JMS any money the Client shall indemnify JMS from and against all costs and disbursements incurred by JMS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, JMS' collection agency costs, and bank dishonour fees). Without prejudice to any other remedies JMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions JMS may suspend or terminate the supply of Goods to the Client. JMS will not be liable to the Client for any loss or damage the Client suffers because JMS has exercised its rights under this clause. Without prejudice to JMS' other remedies at law, JMS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to JMS shall, whether or not due for payment, become immediately payable if:

- a) Any money payable to JMS becomes overdue, or in JMS' opinion the Client will be unable to make a payment when it falls due;

- 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 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Compliance with Laws

The Client and JMS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works. The Client shall obtain (at the expense of the Client) all licenses and approvals that maybe required for the works. The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

24. Privacy Act 1988

The Client agrees for JMS to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by JMS. The Client agrees that JMS may exchange information about the Client 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 the 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 the Client.

25. The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988. The Client consents to JMS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988). The Client agrees that personal credit information provided may be used and retained by JMS for the following purposes (and for other purposes as shall be agreed between the Client and JMS required by law from time to time):

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- a) The provision of Goods; and/or
- b) The marketing of Goods by JMS, its agents or distributors; and/or
- c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the 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. JMS 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;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client. The information given to the credit reporting agency may include:
 - (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that JMS is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) Information that, in the opinion of JMS, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by JMS has been paid or otherwise discharged.

26. Building and Construction Industry Security of Payments Act 2009

At JMS' 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 2009 may apply. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of South Australia, except to the extent permitted by the Act where applicable.

27. General

The failure by JMS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect JMS' right to subsequently enforce that provision. 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. These terms and conditions and any contract to which they apply shall be governed by the laws of the state of South Australia in which JMS has its principal place of business and are subject to the jurisdiction of the courts of Adelaide in that state. Subject to clause 14 JMS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by JMS of these terms and conditions (alternatively JMS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods). 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 JMS nor to withhold payment of any invoice because part of that invoice is in dispute. JMS may license or sub-contract all or any part of its rights and obligations without the Client's consent. The Client agrees that JMS may amend these terms and conditions at any time. If JMS makes a change to these terms and conditions, then that change will take effect from the date on which JMS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for JMS to provide Goods to the Client. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-

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out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

