



TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

- (a) **Commencement Date** means the date on which the Provider begins providing the Services.
- (b) **Goods and Services Tax** means any goods and services tax, consumption tax, value added tax, retail turnover tax or a tax of a similar nature.
- (c) **Minimum Standards** means any relevant standard for the provision of the Services.
- (d) **Provider** means Raw Civil & Contracting Pty Ltd (ACN 621 358 272) and where the context permits includes any or all of its agents, employees, contractors, successors and assigns.
- (e) **Quotation** means any written quotation issued by Provider.
- (f) **Recipient** means the person, firm or company (and where more than one means them jointly and severally) that has requested the Provider to supply the Services, and where the context permits includes the Recipient's agents, employees, contractors, successors and assigns.
- (g) **Services** means the earthworks and earthmoving services agreed to be provided by the Provider at the Site.
- (h) **Site** means the site agreed between the parties and such other place or places as may be agreed by the parties from time to time for the supply of Services.
- (i) **Standby** means any period in which the Provider is ready, willing and able to provide the Services at the Site but is not able to provide the Services for any reason not attributable to the Provider.

2. AGREEMENT

2.1 The Provider agrees to provide the Services to the Recipient pursuant to the terms and conditions set out below.

2.2 These terms will apply to all Services provided to the Recipient by the Provider from time to time, irrespective of whether a Quotation has issued.

3. CHARGES AND PAYMENT

3.1 Unless otherwise agreed in writing, the Provider will invoice the Recipient at such times and in such manner as the Provider may in its absolute discretion determine from time to time.

3.2 Charges for Services will be in accordance with any Quotation or tailored schedule of charges issued by the Provider to the Recipient and will apply to all Services. Charges will include hourly rates for the provision of Services as well as additional costs for the use of consumables, travel to and from the Site and other incidental expenses associated with providing the Services. Where no Quotation or tailored schedule of rates has been given for a particular Service then the Provider's usual current charges for the provision of Services will apply (as varied from time to time).

3.3 Unless otherwise specified, any price quoted by the Provider is based on the Provider complying with Minimum Standards. If the Recipient (for whatever reason) requires any particular method to be used in carrying out the Services, and the Provider agrees to use that particular method, then the Provider will charge the Recipient for such additional labour and cost as is reasonable for applying that method.

3.4 Unless otherwise specified by the Provider on an invoice and an account has been set up and different payment term has been negotiated and approved, the Recipient will pay all invoices rendered by the Provider on completion of work **(0)** day terms from the date of the invoice.

3.5 The Provider expressly reserves the right at any time and without notice to the Recipient to revise its charges for Services. Where the Provider has issued a Quotation the Provider will adhere to that Quotation, subject to:-

- (a) condition 3.3 above; and
- (b) any agreed variations to the Services, materials, methods or other deliverables set out in the Quotation.

3.6 The Provider may refuse to supply Services to the Recipient if any invoice due remains unpaid or if the Recipient in any other way is in breach of its obligations.

3.7 The Provider may charge the Recipient for any period in which the Provider is on Standby. Where a Quotation has been issued for the Services, charges whilst on Standby will be in addition to the amount stated in the Quotation.

4. SERVICES

4.1 The Recipient must:

- (a) prior to engaging the Services, disclose to the Provider any Site specific arrangements; and
- (b) give one full week's notice of any change to the Services required.

4.2 The Recipient:

- (a) acknowledges that a failure to comply with condition 4.1 may cause the Provider loss; and
- (b) agrees to indemnify the Provider for any loss suffered by the Provider arising out of additional payments to the Provider's employees, fines or other penalties incurred due to the Recipient's failure to comply with condition 4.1.

5. INTEREST

5.1 The Recipient will pay interest on all outstanding monies due at the rate of 10.0% per annum.

6. PROVISION OF SERVICES

6.1 In the absence of manifest error, any work order, statement or timesheet completed by the Provider in respect of the Services will be deemed correct. The onus will be on the Recipient to prove manifest error to the Provider's satisfaction.

6.2 If the Recipient disputes any portion of an invoice, the Recipient must pay the undisputed portion without delay.

7. SETUP AND DISMANTLING OF EQUIPMENT

7.1 The Recipient must:

- (a) ensure that the Site is safe and in a structurally sound condition to allow for the provision of the Services;
- (b) ensure that the foundations upon which any equipment is to be placed are sufficiently firm and otherwise suitable to safely support the equipment and the load to be placed on the equipment without subsidence; and
- (c) pay to the Provider the cost of any additional equipment or Services required to be used or supplied by the Provider in order to enable the Recipient to comply with its obligations under this condition.

7.2 The Recipient warrants that the Site is free of obstruction and is ready for the provision of the Services. Charges for Services will accrue from the Commencement Date irrespective of any delay due to a breach of this condition by the Recipient.

7.3 The Recipient must give the Provider adequate access to all areas of the Site for the purposes of inspection to ensure compliance by the Recipient with these conditions and to enable the Provider to perform the Services.

7.4 Unless otherwise agreed in writing, only the Provider and its servants, contractors and agents may operate any plant or equipment used in the provision of the Services.

7.5 The setup of any plant or equipment may only be altered with the express permission of the Provider.

7.6 The Recipient must give the Provider at least fortyeight (48) hours notice of any requirements for the setup, altering or dismantling of equipment used in the provision of the Services.

7.7 The Recipient must allow the Provider to provide the Services without interruption. The Provider may charge for the Services as if they were supplied without interruption, regardless of discontinuity of works unless solely attributable to Provider.

7.8 Where a breakage, breakdown or failure of equipment has arisen by reason of the Recipient not having complied with its obligations under these conditions, the Recipient must pay to Provider on demand the cost of repairing or restoring the equipment together with any loss suffered by the Provider by reason of the breakage, breakdown or failure of the equipment.

7.9 The Recipient must not mark, deface, tamper with, disguise, hide or otherwise adjust any plates, logos, signage or other marks on the Provider's equipment that indicate that the equipment belongs to the Provider. Further, the Recipient must not hold out to any person that it has any right or interest in any of the Provider's equipment.

7.10 Where the Provider is to leave their equipment on Site during the provision of the Services:-

- (a) the Recipient is solely liable to the Provider for any loss or damage to the equipment; and

- (b) the Recipient must provide the Provider with any keys or access devices required to access the Site.

8. TERMINATION AND DEFAULT

- 8.1 Subject to condition 8.2, the Provider may determine the provision of the Services by giving to the Recipient twenty four (24) hours notice.
- 8.2 If the Recipient makes default in the observance or performance of any of these conditions or becomes bankrupt or goes into liquidation, either compulsory or voluntary, or goes into administration or, enters into a deed or arrangement or composition with creditors, or execution is issued against the Recipient's property, or the Recipient otherwise becomes insolvent, the Provider may without notice to the Recipient forthwith determine the provision of Services and remove all of its equipment from the Site.
- 8.3 The Recipient shall on demand pay to the Provider all costs, charges, expenses and fees (including legal fees on a solicitor own client basis) paid or incurred by the Provider as a result of or incidental to any breach by the Recipient of its obligations and the exercise or the attempted exercise by the Provider of its rights.
- 8.4 Termination of these conditions will not prejudice any right of action or remedy which may have accrued to either party prior to termination.

9. WARRANTIES

- 9.1 Except as expressly provided in this Agreement or otherwise required by law, the Provider does not provide any warranty or representation with respect to the Services.

10. LIABILITY AND INDEMNITY

- 10.1 The Provider will not be liable for any loss or damage which the Recipient may suffer arising from, or caused or contributed to by the Services, whether or not that loss or damage arises from the Provider's negligence or default or the negligence or default of the Provider's servants or agents.
- 10.2 If for any reason condition 9.1 is not enforceable by the Provider, then the parties agree that the liability of the Provider for any loss or damage suffered by the Recipient shall be limited to the refund of the amount paid by the Recipient for the Services that caused or contributed to the loss or damage.
- 10.3 The Recipient hereby indemnifies and holds indemnified the Provider from and against all claims, actions, suits, demands, costs and expenses, including all legal costs and expenses on a solicitor and own client basis, in any way arising out of the supply of the Services, whether caused by the negligence or default of the Recipient, its servants or agents or by the negligence or default of any other person whatsoever or arising out of the condition of equipment or the use to which it is put, the experience or training of the persons performing the Services or otherwise whatsoever.

11. GST

- 11.1 The Recipient must pay, in addition to charges for the Services and associated costs, all Goods and Services Tax payable on the supply of the Services. The Recipient may require the Provider to provide a tax invoice as a pre-condition to payment of any GST under these conditions.

12. DISPUTE RESOLUTION

- 12.1 If a dispute or difference arises between the parties in relation to these conditions or concerning the performance or non-performance by a party of its obligations under these conditions (**Dispute**), a party may give notice of the Dispute to the other party. Where notice of a Dispute has been given in accordance with this clause 12.1, the parties must take the following steps to attempt to resolve the dispute:-
 - (a) Within 14 days of the notice of the Dispute, the parties must meet and discuss the Dispute in good faith and with a view to resolving it;
 - (b) If the parties are unable to resolve the Dispute, either party may refer the Dispute to mediation. If the Dispute is referred to mediation, the mediator, the mediator's fees and the mediation rules must be:-
 - (i) Mutually agreed upon by the parties in writing; or
 - (ii) In the absence of agreement, in accordance with the guidelines established by the Australian Commercial Disputes Centre with each party bearing its own costs for the mediation and mediators being shared equally between the parties.
 - (c) If the parties are unable to resolve the dispute by mediation the parties will be free to pursue any remedy available at law.
- 12.2 Clause 12.1 does not prevent a party from commencing legal proceedings for urgent interlocutory relief or otherwise pursuing its rights to remedy under any time sensitive construction industry specific dispute or payment resolution process.

12.3 Notwithstanding the existence of a Dispute, each party will continue to perform its obligations under these conditions unless another provision of these conditions expressly allows them to suspend or stop performing its obligations.

13. GENERAL CONDITIONS

13.1 These conditions read in conjunction with a Quotation (if any) set out the terms of contract between the Provider and the Recipient. Any warranty or representation by or on behalf of the Provider, whether express or implied, not contained in these conditions or the Quotation (if any) is expressly negated except to the extent that contracting out is prohibited by any statute.

13.2 To the extent that there is any inconsistency between these conditions and the terms of any further written agreement between the Provider and any Recipient (including a Quotation issued before or after these Terms and Conditions), then the further written agreement will prevail to the extent of that inconsistency only.

13.3 If any provision of these conditions is void or unenforceable, then that provision shall be severed from these conditions and the remaining conditions shall continue in full force and effect.

13.4 The Recipient must not set off or deduct any monies owed to it by the Provider against monies it owes to the Provider. The Provider may set off or deduct any monies it owes to the Recipient against monies owed to it by the Recipient.

13.5 The laws of Western Australia govern these conditions and the parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

13.6 These conditions may not be amended or modified without the written consent of both parties.

13.7 The delay or giving of time by a party shall not be deemed a waiver of their rights or of the breach. A waiver is only effective if executed in writing by the party waiving their rights.

13.8 No agency, partnership, joint venture or employment is created between the parties as a result of these conditions. No party is authorised to create any obligation, express or implied, on behalf of another party.

13.9 The Recipient may not transfer, assign or novate this agreement without the prior written consent of the Provider.