

## Zayherd PTY LTD T/A QSR EARTHWORKS SERVICES ACN: 081 517 811 Terms & Conditions of Trading

1. In this document unless the context otherwise requires: **ACL** means the Australian Consumer Law as contained in the *Competition and Consumer Act 2010* (Cth); **Claim** includes any claim, action, judgement, arbitration, proceeding, suit, cause of action, defence, set-off or demand; **Consequential Loss** includes, without limitation: damage to any third party's property; loss of profits; loss of revenue; lost production; loss of business; loss of the benefit of any contract or other agreement or arrangement; damage to reputation; and legal costs; **Contractor** means contractor providing the Work; **Customer** means the entity listed on the Job Docket as the customer; **Equipment** means the earthmoving equipment required for completion of the Work; **GST** means any tax, levy, charge or impost implemented under the *New Tax System (Goods and Service Tax) Act 1999* (Cth) (**GST Act**), or an Act of the Parliament of the Commonwealth of Australia substantially in the form or, or which has a similar effect to, the GST Act; **QSR** means QSR Earthworks Services ACN 081 517 811; **Job Docket** means the job docket issued by QSR with respect to the Work; **Liability** means all liabilities (whether actual, contingent or prospective), loss, damages, costs and expenses of whatever description and however and whenever arising; **Location** means the location at which the Work is to be provided; **Terms** means these terms and conditions; **Work** means all earthmoving and associated services supplied by the Contractor to the Customer as set out and reasonably contemplated by the Job Docket; **Work Period** means the period agreed between the Contractor and Customer for the completion of the Work; **Work Fee** means the fee payable by the Customer for the performance by the Contractor of the Work, as set out in the Job Docket.
2. The Customer engages the Contractor for the performance of the Work, and the Contractor accepts that engagement, each on the Terms (**Engagement**). QSR acts only as agent for the Contractor and, other than as set out in the Terms, has no liability with respect to the Engagement.
3. In consideration of the Contractor performing the Work, at the completion of the Work Period or as otherwise specified on the Job Docket the Customer shall pay to QSR:
  - a) The Work Fee; and
  - b) Costs incurred by the Contractor in the performance of the Work, e.g., dumping fees (**Additional Costs**); without deduction or set off (**Total Cost**).
4. Interest will accrue on the Total Cost or any portion thereof which is not paid in accordance with clause 3 at the rate of 2% per month calculated daily.
5. The Customer must pay to QSR any costs, expenses or losses incurred by QSR as a result of the Customer's failure to comply with clauses 3 or 4, including, without limitation, any debt collection and legal costs incurred in enforcing payment.
6. Nothing in the Engagement entitles the Customer to retain or hold Equipment or creates any proprietary interest in Equipment in favour of the Customer.
7. prior to the commencement of the Work, the Customer:
  - a) Shall permit the Contractor and QSR to attend the Location to allow the Contractor to determine the condition and suitability of the Equipment for the performance of the Work;
  - b) Must obtain the necessary permits and/or plans for the completion of the Work and pay any fee(s) payable to any local government or other authority required for performance of the Work;
  - c) Must clearly mark the location of and identify all services above and below ground at the Location including, but not limited to, drains, pipes, sewers, mains, telephone and data cables.
8. During the Work Period, the Customer shall:
  - a) Immediately notify the Contractor and QSR should any competent authority require the suspension or cessation of the Work;
  - b) Immediately notify the Contractor and QSR should it become aware of any fact, matter or thing that might reasonably endanger the Contractor in the performance of the Work;
  - c) Allow the Contractor to store the Equipment at the Location;
  - d) Take all reasonable precautions to keep all persons, including the Customer, its employees, agents and invitees, away from the Equipment while the Equipment is stored, and at a safe distance from the Equipment while it is in operation. Without limitation to this, the Customer shall take all reasonable precautions to prevent bodily injury or damage to property and to comply with all statutory obligations and by-laws and regulations imposed by any public authority for the safety of persons and property in relation to the Work as though the Customer was the Contractor;
  - e) Comply with all reasonable safety requests of the Contractor, And shall not at any time, and shall ensure that no person having access to the Location does not, operate, occupy or attempt to operate or occupy Equipment.
9. If the Equipment is lost, damaged or destroyed due to any fault of the Customer, its servants, agents, employees or invitees, including through failure to comply with a Term, the Customer shall make good that loss or damage at its expense immediately upon demand by QSR.
10. The Contractor shall supply all consumables necessary for the operation of the Equipment, the Equipment and the operator(s) for the Equipment, and, subject to Term 10, is responsible for the repair and maintenance of the Equipment.
11. The Contractor may cease performance of the Work at any time if in the opinion of the Contractor acting reasonably the conditions at the Location are such that it would be unsafe to any person or detrimental to the Equipment for the Contractor to operate the Equipment.
12. The Customer may not assign its benefit with respect to the Engagement.
13. QSR may replace the Contractor at any time where QSR, acting reasonably, believes the Contractor is unable for any reason to complete the Work. If QSR replaces the Contractor, the Customer will sign all paperwork as reasonably required by QSR with respect to completion of the Work by that replacement.
14. The Customer is liable for, and indemnifies the Contractor and QSR from and against, all Claims, loss or damage (including legal costs on a solicitor and own client basis) incurred or suffered by the Contractor or QSR in connection with the Customer's failure to comply with the Terms. This indemnity does not apply to any liabilities of the Contractor or QSR that are not permitted to be excluded under the ACL or otherwise at law.
15. Other than as set out in the Terms, no warranties are provided by or on behalf of the Contractor or QSR in connection with performance of the Work, including without limitation warranties in relation to the Contractor's capacity to undertake the Work. Without limiting this, the Customer acknowledges that in engaging the Contractor the Customer does not rely on any representations, warranties or information provided or statements made by or on behalf of the Contractor or QSR other than as set out in the Terms.
16. With the exception of the consumer guarantees provided by the ACL, all conditions, warranties and obligations, whether implied or imposed by statute or otherwise, in respect of the provision of any services provided by the Contractor are excluded.
17. Subject to any liability under the ACL which cannot be excluded, neither the Contractor nor QSR accepts Liability for any personal injury, death, direct loss, indirect loss, Consequential Loss or damage, however caused which the Customer may directly or indirectly suffer in connection with the Work.
18. If liability under the ACL cannot be excluded but can be limited in the case of services supply by the Contractor that are NOT acquired for personal, domestic or household use or consumption, any personal injury, death, direct loss, indirect loss, Consequential Loss or other damage, however caused which the Customer may incur or suffer in connection with the services is limited to (at the election of QSR) one or more of the following:
  - a) Provision of the services again; or
  - b) Payment of the cost of having the services provided again.
19. The Contractor shall not be obliged to complete or continue the performance of the Work where and to the extent that such performance is prevented or interrupted or delayed by reason of any requirement of any governmental authority or any war, public disorder, civil commotion or disturbance, acts of enemies, strike, lockout, fire, act of terror, act of God, accident or any other cause beyond the control of the Contractor (**Force Majeure Event**). Where the Contractor fails or is delayed in the performance of the Work by a Force Majeure Event, other than any cause of action that cannot be excluded under the ACL or otherwise at law the Customer shall have no cause of action against the Contractor or QSR for a breach of any Term or otherwise. If the Contractor is unable to complete the Work as a consequence of a Force Majeure Event, either QSR or the Contractor may, subject to their obligations under the ACL (if any) and otherwise at law, terminate the Engagement.
20. QSR may terminate the Engagement at any time with immediate effect if the performance or completion of the Work would breach any law, regulation or directive of any competent authority by which the QSR or the Contractor is bound, or if the Customer:
  - a) Hinders or impedes the Contractor in the performance of the Work;
  - B) fails to comply with an essential Term;
  - c) becomes insolvent or bankrupt, has a receiver or receiver and manager appointed to its assets, enters into any scheme for the payment of its creditors, or execution or distress is levied upon its assets; is the subject of an order or resolution for its winding up or liquidation.If the Engagement is terminated for any reason: the Customer must pay any outstanding Work Fee for Work completed and Additional Costs incurred; neither the Customer nor Contractor shall have any further obligation under the Terms subject to this Term 21; and no right or Claim regarding the Engagement which arose before termination will be affected. For the purpose of this Term, any Term imposing an obligation to pay on the Customer, and Terms 8, 9, 10 and 13 are essential Terms. Terms 21, 22, 23 and 24 survive termination of the Engagement.
21. Any Term which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining Terms or the validity of that Term in any other jurisdiction.
22. The Terms are governed and constructed under the law in the State of Queensland.

Any legal action in relation to the Terms may be brought in any court of competent jurisdiction in that State. The Customer irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court in the State of Queensland in relation to both itself and its property.
23. Each indemnity of the Customer given herein is a liability of the Customer separate and independent of any other liability the Customer under these Terms, and survives and continues after performance of the Work and, in the event of termination of the Engagement, that termination.
24. Nothing in the Terms excludes or limits any guarantees or liability arising under the ACL or any other statute if and to the extent that liability cannot be lawfully excluded. Certain conditions and warranties may be implied in the Terms, and rights and remedies conferred on the Customer which cannot be excluded, restricted or modified by the Terms.
25. Words defined in the GST Act and used in the Terms have that meaning as given to them in the GST Act. If any payment made by the Customer to QSR under or relating to the Engagement constitutes consideration for a taxable supply for the purpose of the GST Act, the amount otherwise payable for the supply will be increased so that the net amount retained by the relevant supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This Term, is subject to any other agreement between the Customer and QSR regarding payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, the Agreement.