

GENERAL CONDITIONS

1. AGREEMENT TO PROVIDE THE WORKS

- 1.1 The Customer has requested and Kingston agrees to provide the Works to the Customer in accordance with these General Conditions, the Specific Conditions the Quotation and Contract and Application for Credit and Guarantee (together the "**Agreement Documents**").
- 1.2 Unless otherwise agreed in writing, the Customer is deemed to have accepted the terms of the Agreement Documents by authorising Kingston to proceed with the Works.
- 1.3 To the extent of any inconsistency between the Agreement Documents then:
 - (a) the Contract prevails over the Quotation, the Application for Credit and Guarantee and these General Conditions and Specific Conditions;
 - (b) the Quotation prevails over the Application for Credit and Guarantee and these General Conditions and Specific Conditions; and
 - (c) the Application for Credit and Guarantee prevails over these General Conditions and Specific Conditions.
- 1.4 Kingston may sub-contract the performance of any part of the Works to a Sub-Contractor. Where the Works are performed by a Sub-Contractor, the Agreement Documents apply as if the Sub-Contractor was Kingston.

2. DURATION

- 2.1 Unless otherwise specified, the commencement and completion dates for the provision of the Works are the dates stated in the Quotation and Contract.
- 2.2 The commencement and completion dates for the provision of the Works are intended to be estimates only and are not a contractual commitment.
- 2.3 Kingston will use its reasonable endeavours to meet the commencement and completion dates for the provision of the Works. Kingston is not liable for any delay in completing the Works.

3. PRICING

- 3.1 In consideration of Kingston providing the Works to the Customer in accordance with the Agreement Documents, the Customer must pay to Kingston the price stated in the Quotation or Contract or the Specific Conditions (if applicable).
- 3.2 The hourly rates specified in the Schedule of Rates are subject to change, effective 14 days after the change has been notified to the Customer in writing.
- 3.3 Kingston may increase the price payable if the Customer has not correctly and accurately declared the Material Specifications or any other factor that was used by Kingston to provide the Quotation or Contract.
- 3.4 The Customer may request Kingston to provide additional works at any time. If the Customer requests additional works, Kingston may:
 - (a) reject the request for the additional works;
 - (b) provide a revised quotation for the additional works; or
 - (c) perform the additional works at the rates specified in the Schedule of Rates.
- 3.5 In addition to the amounts the Customer has agreed to pay to Kingston pursuant to clause 3.1, the Customer may from time to time be liable for additional amounts including charges for travel time, transportation/floats, standby rates, penalty rates, site allowances and tollways in accordance with the Schedule of Rates.

4. PAYMENT

- 4.1 If an Application for Credit and Guarantee has been previously executed by the Customer, payment for the Works must be made by the Customer to Kingston in accordance with the terms of the Application for Credit. If the Application for Credit does not specify the payment terms, the payment terms will be 30 days from the end of month.
- 4.2 If credit is not extended by Kingston to the Customer, then the Customer must pay for the Works either:
 - (a) in accordance with the provisions stated in the Quotation or Contract; or
 - (b) if there is no such provision, progressively in arrears on a monthly basis.
- 4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 4.4 Payment terms may be revoked or amended at Kingston's sole discretion immediately upon giving the Customer written notice.
- 4.5 Kingston reserves the right to require payment of a deposit prior to or during the performance of the Works.
- 4.6 All payments from the Customer to Kingston must be made without deduction or set-off.
- 4.7 Kingston may refuse a credit claim if it is not made by the Customer within 7 days from the date of invoice.

5. OWNERSHIP AND RISK OF MATERIAL

- 5.1 The Customer warrants that:
 - (a) the Material Specifications are accurate; and
 - (b) it is the owner of the Material or is authorised and entitled to request the Works in relation to the Material.
- 5.2 At no time does Kingston take or accept any ownership of or responsibility for the Material. All risk and liability in and attaching to the Material remains with the Customer at all times.
- 5.3 The Customer is responsible for all extra costs and risks incurred by Kingston and for any and all damage sustained by Kingston in reliance on the Material Specifications.
- 5.4 The Customer is responsible for accurately disclosing to Kingston the nature, weight, dimensions and type of Material involved in the provision of the Works.

6. DRY HIRE OF EQUIPMENT

- 6.1 If the provision of the Works includes any Dry Hire of Equipment, Kingston agrees to grant the Customer an exclusive licence to use the Equipment in accordance with the Agreement Documents.
- 6.2 The Customer agrees:
 - (a) to use the Equipment in accordance with the Agreement Documents, solely for the use outlined in the Quotation or Contract;
 - (b) not to use all or part of the Equipment for any use that is prohibited by Kingston or any law;
 - (c) to keep the Equipment only at the Site; and
 - (d) not to permit or allow any person other than its employees to use the Equipment for any purpose without the prior written consent of Kingston.
- 6.3 No representation or warranty, express or implied, is given by Kingston to the Customer:
 - (a) as to the condition or suitability of the Equipment for any purpose of the Customer; or
 - (b) that Equipment will meet any requirements of the Customer.
- 6.4 The Customer acknowledges that it has no right, title, estate or interest in the Equipment.

6.5 Upon termination of the Quotation or the Contract, the Customer must:

- (a) immediately stop all use of the Equipment;
- (b) restore and reinstate the Equipment to the state, order and condition as existed on the commencement date in accordance with the Customer's obligations in the Agreement Documents; and
- (c) deliver the Equipment to Kingston or at its direction.

6.6 If in the opinion of Kingston any work is required to make good remedy or repair any damage done to the Equipment by the Customer to restore the Equipment to the condition and order the Equipment was in at the commencement date, Kingston is hereby authorised and entitled to carry out such repairs restoration and alteration as it deems necessary at the cost of the Customer which will be a liquidated debt, payable on demand.

7. SECURITY INTEREST

7.1 Expressions used in this clause 7 and in the PPSA have the same meanings as when used in the PPSA.

7.2 The Customer acknowledges that the Agreement Documents may be a PPS Lease and create a security interest in favour of Kingston for the purposes of the PPSA, and:

- (a) Kingston may register any security interest with the Registrar of Personal Property Securities pursuant to the PPSA in order to perfect its security interest;
- (b) the Customer agrees that any security interest granted to Kingston is a purchase money security interest for the purpose of the PPSA;
- (c) if requested, the Customer must pay or reimburse the costs of registering the security interest, and provide Kingston with all assistance reasonably required in order for Kingston to register the security interest; and
- (d) for the purpose of section 115 of the PPSA, the following sections of the PPSA do not apply to the Agreement Documents: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135.

7.3 The Customer authorises Kingston to search the Personal Property Securities Register at any time for any information about the Customer.

7.4 The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest granted under the Agreement Documents.

8. SITE REQUIREMENTS

8.1 The Customer must provide on-site staff or contractors to supervise and manage the Site and the provision of the Works ("**Supervisors**"). The Customer must provide Kingston or its Sub-Contractors with site specific induction if required by law.

8.2 The Customer must ensure that all of its Supervisors are appropriately trained and experienced to manage and control the Site and to direct the Works being provided by Kingston.

8.3 Kingston will deem any Supervisors to be authorised by the Customer to request services and approve all changes to pricing and specifications, unless Kingston is specifically notified otherwise by the Customer in writing.

8.4 All risk and liability in and relating to the Site remains with the Customer at all times.

8.5 The Works are provided under the control, supervision and direction of the Customer. Kingston and its Sub-Contractors are not obliged to follow any unreasonable or unlawful direction of the Customer, or any direction which may pose a risk to the Equipment, the Operator or any other person or property.

8.6 Unless otherwise specified, the Customer is responsible for directing Kingston or its Sub-Contractor at the Site, and for the safe Cartage of the Material. Unless

otherwise specified, the Customer must prepare or arrange a risk assessment and SWMS for the provision of the Works that is specific to the Site.

8.7 The Customer must ensure and warrants that the Site specified for the removal and/or disposal of the Material and the provision of the Works meet with all applicable occupational health and safety legislation and guidelines.

8.8 The Customer is responsible at all times for maintaining the safety and cleanliness of the Site and its access roads, including the removal of mud and debris.

8.9 The Customer must make all enquiries and notify Kingston as to the existence and location of any overhead and underground cables, pipes and/or other subterranean Works and utilities at the Site.

8.10 The Customer grants to Kingston and its Sub-Contractors an irrevocable licence to enter upon the Site at any time for the purpose of removing the Equipment.

8.11 The Customer must provide suitable, practical and safe means of access and egress to the Site.

9. DELIVERY AND COMPLETION OF WORKS

9.1 Kingston must perform the Works in accordance with the law and with all due care and skill.

9.2 Kingston may determine in its absolute discretion:

- (a) the route for Cartage of the Material; and
- (b) the method of handling the Material.

9.3 The Customer or its Supervisor must sign Kingston's Docket Book upon completion of the Works. Kingston's Docket Book will be prima facie proof of the contents stated, and the completion of the Works.

9.4 If the Customer fails or refuses to accept delivery of the Material, or Kingston is unable to accept delivery for any reason other than the fault of Kingston, the Customer must pay Kingston for all costs associated with storage, handling and re-delivery of the Material, or return of the Material to the collection Site.

9.5 The Customer may be charged for any delay occasioned to Kingston when attempting to load or unload the Material, other than arising from the fault of Kingston.

10. INSPECTION OF WORKS

10.1 The Customer must inspect the Site and satisfy itself that the Works have been provided at the Site. If the Customer is not so satisfied, it must notify Kingston in writing within 2 days of the completion of the Works.

10.2 If the Customer fails to give the notice as required in clause 10.1, it is deemed to have accepted the provision of the Works and will be bound to pay for them.

10.3 Subject to clause 12.5, the Customer must notify Kingston immediately of any damage the Customer claims was caused or contributed to by Kingston and give Kingston a reasonable time to assess the alleged damage. A failure to notify Kingston immediately of a damage claim may result in that damage claim being refused.

11. GOODS AND SERVICES TAX

11.1 Any expression used that is defined in the GST Law has that defined meaning where the context permits.

11.2 Any consideration specified as payable by one party ("**Recipient**") to the other party or a third party ("**Supplier**") under the Agreement Documents is expressed as a GST exclusive amount ("**GST exclusive consideration**").

11.3 In addition to any GST exclusive consideration, if the Supplier makes a taxable supply, the Recipient must pay to the Supplier a sum ("**GST amount**") equivalent to the GST payable in respect of that taxable supply at the same time and in the same manner as the GST exclusive consideration is payable.

11.4 The Supplier's right to payment of the GST amount under this clause is subject to a tax invoice being delivered to the Recipient.

11.5 If the Agreement Documents require a party to pay an amount of an expense or liability ("**reimbursement expense**") incurred by the other party ("**payee**") to a third party, the reimbursement expense must be net of any

"input tax credit" (as defined in the GST Act as amended) to which the payee is entitled to in relation to it.

12. LIABILITY

12.1 Kingston is not a common carrier and accepts no liability as such.

12.2 To the extent permitted by law, Kingston excludes all warranties, conditions, guarantees or terms, other than those expressly set out in the Agreement Documents including, but not limited to, all warranties, conditions, guarantees or terms implied in fact or by law. Nothing in this clause has the effect of excluding, restricting or modifying any non-excludable statutory condition, warranty, guarantee, right, remedy or other benefit that is preserved by the *Competition and Consumer Act 2010* (Cth) (or any other legislative provision).

12.3 If any liability of Kingston cannot be lawfully excluded by law, then Kingston's liability is limited (at Kingston's option) to:

- (a) re-providing the Works; or
- (b) reimbursing the Customer for the cost of having the Works re-supplied by a third party; or
- (c) refunding to the Customer amounts paid by the Customer to Kingston for the defective Works.

12.4 Kingston is not liable for, and the Customer must indemnify Kingston against:

- (a) any Claim arising out of a breach of the Agreement Documents, including the Customers' warranties, by the Customer;
- (b) any indirect or consequential losses or expenses suffered by the Customer in connection with the provision of the Works, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill, or claims against the Customer by any third parties; and
- (c) any third party claims, for any failure to comply with the Customer's directions in relation to the Works, to the extent that such direction is unlawful or unreasonable, or may pose a risk to the Equipment, the Operator or any other person or property.

12.5 The total aggregate liability of Kingston to the Customer for any loss or damage (including indirect and consequential loss or damage), howsoever caused, is limited (to the extent permitted by law) to an amount equal to the fees paid by the Customer to Kingston in respect of the Works which the claim relates.

12.6 To the extent permitted by law, the Customer releases and indemnifies Kingston against all Claims for loss, damage or injury arising from or in any way connected with the Works, except to the extent caused by Kingston's negligence or breach of the Agreement Documents.

13. DEFAULT AND TERMINATION

13.1 If the Customer fails to pay an amount due under the Agreement Documents for more than 7 days after the due date, the Customer must pay interest on the amount overdue:

- (a) at the rate which is 2% per annum above the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic); and
- (b) from and including the due date until but excluding the date of payment.

13.2 Kingston may suspend or terminate the provision of the Works by written notice for cause, immediately upon notice to Customer, upon the occurrence of any of the following events:

- (a) the Customer breaches or fails to carry out a material obligation under the Agreement Documents and the breach is not capable of remedy;
- (b) the Customer breaches a material obligation under the Agreement Documents which breach is capable of remedy, but fails to remedy that breach within 14 days after receipt of written notice from Kingston giving full particulars of the breach and requiring it to be remedied;

(c) an Insolvency Event occurs in relation to the Customer;

(d) the Customer breaches a payment obligation under the Agreement Documents but fails to remedy that breach within 7 days after receipt of written notice from Kingston giving full particulars of the breach and requiring it to be remedied; or

(e) in relation to the Dry Hire of Equipment, in the opinion of Kingston:

- (i) the Customer causes or allows to be caused damage to the Equipment; or
- (ii) the Equipment is being operated unsatisfactorily.

13.3 Suspension or termination of the Works is without prejudice to any rights or obligations that have accrued or are owing prior to such suspension or termination, including but not limited to payments of money.

14. UNAVOIDABLE EVENTS

A failure or omission to carry out or observe any term of the Agreement Documents will not:

- (a) give rise to a claim by any party against another; or
- (b) result in a breach of the Agreement Documents, if the failure or omission arises by reason of delay or inability to perform caused by a Force Majeure Event.

15. GOVERNING LAW

15.1 The Agreement Documents are governed by and construed in accordance with the laws of Victoria.

16. WAIVER

16.1 A failure of a party at any time to require performance of any obligation under the Agreement Documents is not a waiver of that party's right:

- (a) to claim damages for breach of that obligation; or
- (b) at any time to require performance of that or any other obligation under the Agreement Documents, unless written notice to that effect is given in accordance with clause 16.2.

16.2 Waiver of any provision of or right under the Agreement Documents:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

17. SEVERANCE

17.1 The parties agree that a construction of the Agreement Documents that results in all provisions being enforceable is to be preferred to any other construction.

17.2 If, despite the application of clause 17.1, a provision of the Agreement Documents is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and
- (b) in any other case, the whole provision is omitted, and the remainder of the Agreement Documents continues in force.

18. GENERAL

18.1 The Agreement Documents constitute the whole agreement between the parties, and supersede all prior representations, warranties, arrangements, understandings and agreements between the parties, relating to the subject matter of the Agreement Documents.

18.2 A notice must be in writing and handed personally or sent by fax, email or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received within 2 business days of posting. Notices sent by fax or email are deemed to be received upon the sender's telecommunications machine confirming transmission.

18.3 In providing the Works to the Customer under the Agreement Documents, the parties intend to create the relationship of principal and independent contractor. Nothing in the Agreement Documents is to be interpreted as creating a relationship of partnership, employer and employee, agency or joint venture between the parties.

19. DEFINITIONS

In these General Conditions:

"Application for Credit and Guarantee" means any application for credit granted to the Customer and the guarantee entered into by the guarantor in favour of Kingston;

"Cartage" means the loading, unloading, carting or transporting of Material to or from the Site or between the Sites by Kingston for the Customer;

"Claim" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, whether based in contract, tort, statute or otherwise;

"Contract" means any contract entered into for the provision of Works by Kingston to the Customer;

"Customer" means the person, firm or corporation, jointly and severally if there is more than one, acquiring the Works from Kingston;

"Docket Book" means Kingston's docket book supplied by the Sub-Contractor to the Customer to sign to verify the attendance of the Sub-Contractor and the Works having been completed;

"Dry Hire" means the hire of any Equipment by the Customer to be operated without and Operator;

"Equipment" means the vehicles and machinery owned by Kingston or the Sub-Contractors and used in the provision of the Works;

"Force Majeure Event" affecting a party means anything outside that party's reasonable control, including without limitation, fire, storm, flood, earthquake, explosion, war, labour dispute, labour shortage, transportation embargo or failure or delay in transportation;

"General Conditions" means these General Conditions for the provision of the Works.

"GST" means the goods and services tax as provided for by the GST Law;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

"GST Law" means the GST Act and any associated legislation including without limitation delegated legislation. Any expression used that is defined in the GST Law has that defined meaning where the context permits;

"Insolvency Event" means, in respect of a Customer that is a corporation:

- (a) a receiver, receiver and manager, trustee, other controller as defined in section 9 of the *Corporations Act 2001 (Cth)* or similar official is appointed over any of the assets or undertaking of the Customer;
- (b) the Customer is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001 (Cth)*;
- (c) the Customer enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) the Customer ceases to carry on business or threatens to cease to carry on business;
- (e) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (f) an application or order is made for the winding up or dissolution of the Customer or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Customer, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of Kingston;

and, in respect of a Customer who is an individual:

- (g) the Customer becomes bankrupt or enters into any arrangement or composition with his or her creditors or proposes to do so.

"Kingston" means Kingston Plant Hire (Victoria) Pty Ltd (ACN 007 424 124);

"Material" means any soil, compost or organic matter delivered to or removed from the Site (as appropriate), whether clean fill, contaminated fill or compactable materials;

"Operator" means any drivers or operators of the Equipment provided by Kingston to the Customer, either in conjunction with the Works or separately;

"Quotation" means the written quotation provided by Kingston to the Customer concerning the proposed provision of the Works;

"Schedule of Rates" means Kingston's usual and current schedule of rates and charges for Works as amended from time to time;

"Site" means the site or sites identified by the Customer where the Works are to be provided;

"Specific Conditions" means the Specific Conditions for the provision of Works;

"Sub-Contractor" means any person who performs the Works pursuant to an arrangement with Kingston.

"SWMS" means a Safe Work Method Statement as defined in the *Occupational Health and Safety Regulations 2007 (Vic)*; and

"Works" means all Works supplied by Kingston to the Customer, whether itself or through a Sub-Contractor, and includes (as appropriate) but is not limited to the provision of Equipment with or without Operators, excavation and earth moving Works and Cartage.

SPECIFIC CONDITIONS

*Note: Capitalised terms in these Specific Conditions have the same meaning as in Kingston's General Conditions which can be found at www.kingstonplanthire.com.au

<p>Minimum Hire Period <i>First Day of Job</i></p> <p><i>Last Day of Job</i></p> <p><i>No Start</i></p> <p><i>Wet Weather / High Temperature</i></p>	<ul style="list-style-type: none"> ▪ 5 hours plus travel or transport charge - Backhoes & Bobcats ▪ 6 hours - Tip trucks ▪ 6 hours plus travel or transport charge - 1 to 6.9t Excavators, Water cart (with operator) ▪ 8 hours plus delivery & return - all "dry" hire equipment ▪ 8 hours - all other equipment <ul style="list-style-type: none"> ▪ 4 hours – small machines & tippers; 6 hours - medium to large machines ▪ 8 hours – "dry" hire equipment; or by arrangement <ul style="list-style-type: none"> ▪ 2 hours applies when operator on-site at agreed time but not started plus travel / transport <ul style="list-style-type: none"> ▪ actual hours worked, with a minimum of 2 hours
<p>Travel Time</p>	<p>When applicable applies to first day of job or by arrangement between Kingston and the Customer.</p>
<p>Transport / Float Charges</p>	<p>A Two way transport charge applies to some machinery, in particular the larger machines, and when hours worked are less than 24 hours. These can <u>include</u> Excavators 12t and over, Traxcavators, Dozers, Graders. Exceptions to the 2 way float can apply if the machines can be left securely on-site. 'Dry' hire equipment generally a two way charge applies. Weight restrictions may result in ancillary equipment being separately transported and charged accordingly. Distance to travel can affect charge / fee.</p>
<p>Standby Rate</p>	<p>When requested to stay on-site but not working, at 50% of normal rate.</p>
<p>Penalty Rate</p>	<p>An additional hourly rate from \$15 applies to out of normal hours work, generally between the hours of 6 pm and 6 am (Monday to Saturday) or any time on Sundays and Public Holidays.</p>
<p>Combination ('Combo') Rates / Ancillary Eqpt</p>	<p>Any equipment actually used on the job as part of a "combo" is included for the full day. Ancillary equipment used applies as per Kingston's Costing Guide, generally at a 'day rate'.</p>
<p>Site Allowance, Tollways</p>	<p>These charges may be charged in addition to the standard hourly hire rates. Kingston applies a margin on the toll charge. The Customer can request an operator / driver NOT to use tollways.</p>
<p>GST</p>	<p>The 10% GST is additional to the rates listed in Kingston's Costing Guide or advised at time of placing order; shown separately on invoices.</p>
<p>Occupational Health & Safety (OH&S) / Union</p>	<p>It is the responsibility of the Customer's site representative to inform and induct the operators regarding all OH&S issues on-site; and to ensure the operators have all their appropriate OH&S documentation.</p>
<p>Credit / Damage Claims</p>	<p>Damage claims to be reported to Kingston's Operations staff on the day of damage. Kingston and its operators MUST be given an appropriate opportunity to properly assess the damage, otherwise claims may be refused. Credit claims are to be advised no later than 7 days from date of invoice, otherwise they may be refused.</p>
<p>Hire Docket Authorisation</p>	<p>It is the responsibility of the Customer's site representative's to ensure that all the information listed on the Hire Docket is correct prior to signing/authorising it.</p>
<p>Underground Services</p>	<p>It is the responsibility of the Customer to ensure that all underground services are properly located, marked & / or protected and that Operators are properly advised of these.</p>
<p>Rates & Conditions Of Hire</p>	<p>These can vary from time to time. Please ensure that rates and conditions confirmed each time an order is placed with Kingston.</p>
<p>Purchase Order Numbers</p>	<p>If the Customer requires a purchase order number, it is the Customer's responsibility to ensure this is provided at the time each order is placed and also noted on the Hire Docket at time of authorisation.</p>
<p>Tipping</p>	<p>The categorisation and volume of material determined by the disposal/tip site, is the basis on which the material will be invoiced to the Customer when tipping is carried out on a Kingston Tip Account.</p>
<p>Supervision</p>	<p>It is the responsibility of the Customer's site representative's to supervise equipment on-site. Failure to do so may result in Damage Claims or Credit Claims being rejected by Kingston.</p>
<p>Overdue Account</p>	<p>Should payment remain outstanding beyond Kingston's payment terms in accordance with the Customer's account application, the Customer is liable for all costs including legal costs (on a solicitor/own client basis) and mercantile agent fees incurred by Kingston in recovering the amount outstanding.</p>