

TERMS AND CONDITIONS OF SERVICES

1. DEFINITIONS

In these Terms and Conditions, unless the context or subject matter otherwise require:

- (a) **Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;
- (b) **Contract** means this legally binding agreement entered between you and Tyzac for the supply of Services comprising these Terms and Conditions and a relevant Purchase Order from time to time;
- (c) **Customer (you/your)** means the person or entity to whom Services are supplied from time to time and the Customer's servants and agents;
- (d) **Debt** means any and all moneys due and owing by you to Tyzac whether in relation to one or more Contracts and includes, without limitation, any Overdue Amounts;
- (e) **Equipment** means any equipment, plant, machinery, tools and/or spare parts used under a Contract;
- (f) **IP** means all intellectual and industrial property rights (such as copyright and related Rights), all Rights in relation to inventions (including patents and patent Rights), all registered and unregistered trade-marks, all Rights relating to registered designs, and all other Rights resulting from intellectual activity in the artistic, literary or scientific fields excluding any moral attribution Rights;
- (g) **Tyzac (we/us/our)** means Tyzac Vacuum Excavations Pty Ltd ATF TVE Trust and its servants and agents;
- (h) **Manufacturer** means the maker or makers of goods or any part or component of goods;
- (i) **Obligation** means any express or implied legal, equitable, contractual, statutory or other obligation, promise, agreement, covenant, commitment, duty, undertaking or liability;
- (j) **Offer** means a verbal or written communication made by Tyzac (or any person on behalf of Tyzac) to you for the supply of Services to you;

- (k) **Overdue Amount** means any amount of money that remains unpaid after Tyzac issues an invoice to you requiring payment for that amount and the time permitted to pay that amount has lapsed;
- (l) **Parties** means you and Tyzac;
- (m) **Personal Information** has the definition attributed to it under the Privacy Act 1988 (Cth);
- (n) **Purchase Order** means any customer docket or written communication made by you (or any person on your behalf) to Tyzac requesting Tyzac to supply Services to you in the approved form supplied by Tyzac;
- (o) **Right** means any legal, equitable, contractual, statutory or proprietary right, chose in action, power, authority, benefit, privilege, remedy, or discretion;
- (p) **Services** means any service that Tyzac may provide from time to time;
- (q) **Special Condition** means any condition set out in writing in signed by both parties that apply to the Contract; and
- (r) **Terms and Conditions** means the terms and conditions set out in this document and includes the Special Conditions.

2. GENERAL

When you enter into a Contract with Tyzac you agree that:

- (a) you have read and understood these Terms and Conditions and you agree to be bound by them;
- (b) these Terms and Conditions apply to every transaction for the supply of Services; and
- (c) any variation to a Contract or these Terms and Conditions must be made with the consent of both Parties and must be in writing and signed by both Parties.

3. PLACING ORDERS WITH TYZAC

- (a) If you wish to request Tyzac to supply Services to you, you must deliver a Purchase Order to Tyzac by email, facsimile, post or hand-delivery.
- (b) A Purchase Order must not contain, or incorporate by reference, any other document, terms or conditions.
- (c) Tyzac will endeavour to inform you whether Tyzac accepts or does not accept a Purchase Order within seven days after that Purchase Order is received by us.

- (d) Tyzac may accept a Purchase Order by:
 - (i) delivering written notice to you;
 - (ii) verbally communicating its acceptance to you or your personnel; or
 - (iii) supplying the Services requested by a Purchase Order.
- by or caused by the person provided;
- (ii) indemnify Tyzac from any loss it suffers in connection with allowing a person provided by you to assist with provision of the Services.

4. OFFERS TO SUPPLY

- (a) In the absence of a Purchase Order being delivered to Tyzac by you, an Offer may be made from Tyzac to you.
- (b) An Offer will lapse if, seven days after the Offer has been delivered to you, the Offer has not been accepted by you.
- (c) You must endeavour to inform Tyzac whether you accept or do not accept an Offer within seven days of the date that Offer is delivered to you.
- (d) You may accept an Offer by:
 - (i) written notice to Tyzac;
 - (ii) verbally communicating your acceptance to Tyzac personnel; or
 - (iii) allowing (through act or omission) Tyzac to provide Services to you.

5. ENTIRE AGREEMENT

No other terms or conditions apply to the Contract between the Parties, these Terms and Conditions and the details that have provision made for insertion in Tyzac's approved Purchase Order are the only terms that apply to the Contract.

You fully indemnify and hold Tyzac harmless from any Claim based on terms and conditions outside of these Terms and Conditions.

6. WARRANTIES

You warrant that:

- (a) any Equipment used by Tyzac in the provision of the Services remains the sole property of Tyzac;
- (b) any person provided to assist Tyzac in executing the Services is entirely your responsibility and:
 - (i) you hold appropriate WorkCover or other insurances required to cover any injury, death or other loss suffered

7. RATES

- (a) The minimum hire period for our Services is four (4) hours and this will apply regardless of whether a termination of the Contract is made prior to the provision of the Services.
- (b) If you deliver a Purchase Order to us, our hire rates for Services provided pursuant to that Purchase Order will be as expressly stated in that Purchase Order except that any Services provided outside of normal business hours or on a Saturday, Sunday, statutory or gazetted public holidays may attract an additional charge.
- (c) If an Offer is made to you, you will be deemed to have accepted the hire rates that we charge you for Services provided pursuant to that Offer if you:
 - (i) do not request the disclosure of our hire rates to you before you accept our Offer; and
 - (ii) do not make a written request to us to vary our Offer and reach an agreement with us in writing to charge different hire rates.

8. PPSA

You acknowledge and agree that pursuant to the Contract and for the purposes of the PPSA Tyzac:

- (a) retains ownership of the Equipment at all times and you are a mere bailee in possession by virtue of it being on your site to conduct the Services;
- (b) maintains a security interest in all of your assets as well as any work product created that has derived from the Services Tyzac provided;
- (c) is entitled in its sole discretion to take such steps as it considers necessary or required to register its security interest on the PPSA register including providing information about you as the grantor of the security interest; and

- 9. You grant Tyzac the right to lodge either (or both), a:

- (a) general security interest over the Customer's all present and after acquired assets;
- (b) a specific security interest over any account that the Customer will be receiving money from a party in which Tyzac's provision of Equipment or Services forms part of the works the Customer is contracted to do.

express, implied and statutory warranties.

- (c) Where any statutory warranties may not be excluded, Tyzac' liability is limited to an amount equal to the cost of replacement of the Service.
- (d) Tyzac will not be liable for any damage, loss, expense, charge or cost incurred by you as a consequence of:

INSURANCE

10. You must maintain Public Liability insurance to a minimum \$20 million for each instance.

- (i) any delay by Tyzac to supply Services to you, whether caused by breakdown, accident, collision, termination of Services by you, termination of Services by Tyzac or otherwise;

PAYMENT

- (a) You must pay the amount stated in any invoice issued by Tyzac as stated on the invoice.
- (b) If you fail to pay an invoice in accordance with paragraph (a), the unpaid portion of the amount of that invoice becomes an Overdue Amount.
- (c) You do not have any right to set-off an amount against a Debt or Overdue Amount and any Claim you believe that you have against Tyzac for monetary remuneration shall be made separately to your Obligations to make payment of a Debt under this Contract.
- (d) Tyzac may charge interest at the rate of 4% per month on any Overdue Amount until the Overdue Amount is paid.

- (ii) termination of Services by you;
- (iii) termination of Services by Tyzac;
- (iv) any injury or death to a person; and/or
- (v) any damage to property, whether caused directly or indirectly by Tyzac or any employee, agent or other person on behalf of Tyzac.

- (e) You must fully indemnify Tyzac against any Claim that becomes due and payable by Tyzac under a contract or as a result of entering into a contract and arises from or in connection with:

CREDIT

If you have made a credit application with Tyzac and have been granted different payment terms to those stipulated above, the payment terms stipulated in your "Credit Acceptance Letter" will apply until such time as Tyzac revokes your entitlement to credit which may occur completely at Tyzac's discretion.

- (i) any injury or death to a person; and/or
- (ii) any damage to or theft of Equipment or property.

LIMITATION OF LIABILITY

- (a) If you have a genuine grievance with any Service you must notify Tyzac in writing within three days after that Service is supplied. Tyzac will then consider the merits of your claim and at its sole discretion:
 - (i) re-supply the Service;
 - (ii) provide a partial refund for that Service; and/or
 - (iii) decline to provide any remedy contained in this clause.
- (b) Tyzac expressly disclaims, to the fullest extent permitted by law, all

14. TERMINATION

Termination by Tyzac

- (a) Tyzac may terminate a Contract immediately upon notice to you in any form at any time and for any reason.
- (b) Tyzac's only liability to you upon termination of the Contract is limited to refunding payments made in advance for Services not yet provided less the Debt owing to Tyzac.

Termination by you

- (c) You may terminate a Contract upon written notice to Tyzac sent by express post to Tyzac's at PO Box 241 Beerwah QLD 4519;
- (d) Upon your termination of a Contract, you will still be liable to pay Tyzac any Overdue Amounts and any amount

that would have been payable under a Purchase Order had you not terminated the Contract.

relevant part will be deemed to be void and severable and the remaining provisions of this document will not in any way be affected or impaired.

15. **PRIVACY**

Except as permitted under these Terms and Conditions, Tyzac will not, without your consent, use your Personal Information in a way that breaches the *Privacy Act 1988* (Cth).

16. **DISPUTE RESOLUTION**

If you consider there is a genuine dispute between the Parties regarding any aspect of a Contract or its performance then before seeking arbitration or commencing other legal proceedings you must give Tyzac notice in writing setting out full details of the dispute (**Dispute Notice**) and the Parties agree to take the following steps to resolve the dispute:

- (a) for a period of 14 days after a Dispute Notice is given (or a longer period if the Parties agree in writing), the Parties will engage in negotiations and discussions in order to seek to resolve the dispute;
- (b) the Parties must participate in the negotiations and discussions and use all reasonable endeavours to resolve the dispute. The Parties may also appoint third party consultants to assist in the resolution of the dispute;
- (c) if the Parties cannot resolve the dispute within the period stated in paragraph (a), the dispute may be referred to –
 - (i) mediation provided that both parties agree to refer the matter to mediation and agree to the appointment of a particular mediator; or
 - (ii) a court of competent jurisdiction or an adjudicator with jurisdiction to determine the dispute, such referral being made by either of the Parties.

17. **ILLEGALITY AND SEVERABILITY**

So far as possible a Contract will be construed so as not to be invalid, illegal or unenforceable but if any provision on a proper construction is illegal, invalid or unenforceable:

- (a) that provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable and in such manner as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot be read down in a manner that will give it a valid operation, then the provision or

18. **JURISDICTION**

You agree that the laws of Queensland apply to a Contract regardless of your business, residential location, the location nominated for delivery of any Equipment, the address for supply of Services or any other factor.

19. **GUARANTEE**

In consideration for Tyzac providing the Services to the Customer, the Guarantors identified on the execution page 9 unconditionally and irrevocably guarantee to Tyzac the Customer's performance of the Customer's Obligations under the Contract and the payment of all monies owing at any time by the Customer to Tyzac, whether owing under a Contract or otherwise. If no one is listed and the Customer is a company, the Customer must procure Guarantees from all directors and shareholders of the Company in favour of Tyzac.

EXECUTED as a Deed.

EXECUTED by Tyzac)
 Vacuum Excavations Pty)
 Ltd ATF TVE Trust)

in accordance with section 127(1) of the *Corporations Act* by:

_____	_____
Director/Secretary	Director
Name (printed):	Name (printed):

EXECUTED by)
)
 in accordance with section 127(1) of the *Corporations Act* by:

_____	_____
Director/Secretary	Director
Name (printed):	Name (printed):

SIGNED SEALED and)
DELIVERED by)
)
 in the presence of:

_____	_____
Witness	Guarantor

Name (printed):

Name (printed):

SIGNED SEALED and)
DELIVERED by the)
Guarantor)

in the presence of:

Witness

Guarantor

Name (printed):

Name (printed):