

# General Terms and Conditions of Trade

## 1. Goods

- 1.1 The Goods (including any incidental supply of services) shall be as described on any invoices, quotation, work authorisation, or any other forms which are provided by Michael C & Monique Farrugia T/A M & M Earthmoving (hereinafter referred to as M&M Earthmoving) to the Client.

## 2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by M&M Earthmoving to the Client in respect of the Goods supplied.
- 2.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated then payment will be due seven (7) days following the date of the invoice.
- 2.3 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by M&M Earthmoving.

## 3. Default & Consequences of Default

- 3.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at M&M Earthmoving's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 3.2 If the Client owes M&M Earthmoving any money the Client shall indemnify M&M Earthmoving from and against all costs and disbursements incurred by M&M Earthmoving in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, M&M Earthmoving's collection agency costs, and bank dishonour fees).

## 4. Title

- 4.1 It is the intention of M&M Earthmoving and agreed by the Client that:
- (a) the ownership of Goods shall not pass until the Client has paid M&M Earthmoving all amounts owing to M&M Earthmoving; and
- (b) the Client has met all of its other obligations to M&M Earthmoving; and
- (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 M&M Earthmoving and must pay or deliver the proceeds to M&M Earthmoving on demand.

## 5. Personal Property Securities Act 2009 ("PPSA")

- 5.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 5.2 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 M&M Earthmoving to the Client.
- 5.3 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 M&M Earthmoving 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 5.3(a)(i) or 5.3(a)(ii);
- (b) indemnify, and upon demand reimburse, M&M Earthmoving 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 M&M Earthmoving;
- (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 M&M Earthmoving;
- (e) immediately advise M&M Earthmoving 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.

- 5.4 M&M Earthmoving 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.
- 5.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 5.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 5.7 Unless otherwise agreed to in writing by M&M Earthmoving, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 5.8 The Client must unconditionally ratify any actions taken by M&M Earthmoving under clauses 5.3 to 5.5.
- 5.9 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 the PPSA.
- ## 6. Privacy Act 1988
- 6.1 The Client agrees for M&M Earthmoving to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by M&M Earthmoving.
- 6.2 The Client agrees that M&M Earthmoving 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 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 creditworthiness of Client.
- 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.
- 6.3 The Client consents to M&M Earthmoving being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 6.4 The Client agrees that personal credit information provided may be used and retained by M&M Earthmoving for the following purposes and for other purposes as shall be agreed between the Client and M&M Earthmoving or required by law from time to time:
- (a) provision of Goods; and/or
- (b) marketing of Goods by M&M Earthmoving, its agents or distributors in relation to the Goods; 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 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.
- 6.5 M&M Earthmoving 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.
- 6.6 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 M&M Earthmoving 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 M&M Earthmoving, 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 have been dishonoured more than once;
- (h) that credit provided to the Client by M&M Earthmoving has been paid or otherwise discharged.