



Terms and Conditions

1. Definitions

- 1.1 "Contractor" shall mean Vacster Pty Ltd T/A Hills Irrigation.
- 1.2 "Owner" shall mean the Owner or any person acting on behalf of and with the written authority of the Owner.
- 1.3 "Works" shall mean the Works as described The Description of Works in this contract.
- 1.4 "Materials" shall mean Materials required in order to complete the Works.
- 1.5 "Prime Cost Item" shall mean an item that either has not been selected, or whose price is not known, at the time this contract is entered into and for the cost of supply and delivery of which the Contractor must make a reasonable allowance in the contract.
- 1.6 "Provisional Sum" shall mean an estimate of the cost of carrying out particular Works under this contract for which the Contractor, after making all reasonable inquiries, cannot give a definite price at the time this contract is entered into.
- 1.7 "Contract Price" shall mean the price of the Works as agreed between the Contractor and the Owner

2. Variations

- 2.1 In the event that the Owner requests a variation the Contractor will give the Owner a written variation document detailing the Works, the amended Contract Price, the estimated time to undertake the variation, the likely delay to the completion date if any, and require written acceptance by the Owner of the variation before commencing Works on the variation.
- 2.2 In the event that the Contractor requests a variation, the Contractor will, in writing state the reason for the variation, provide a full description of the variation, state any effect the variation will have on the contract, including but not limited to, the Contract Price, completion date and whether further permits or authorisations are required, and shall require written acceptance by the Owner of the variation before commencing Works on the variation.
- 2.3 All variations to this contract (including those to the plans and specifications) must be in writing, dated and signed by both parties to the contract.
- 2.4 All variations in this contract shall include an allowance for contractors overheads and profit

3. Contract Price And Payment

- 3.1 Time for payment shall be of the essence and will be stated on the invoice. If no time is stated then payment shall be within seven (7) working days of the date of the invoice.
- 3.2 Any deposit shall be payable on the day that this contract is signed by the owner.
- 3.3 The Owner shall make progress payments (within 5 days of receipt from the Contractor in writing of a progress claim) for each completed stage of the Works as stated in this contract. Such payments shall include any amounts payable for Contract Price adjustments or variations claimed and not paid prior to each progress payment.
- 3.4 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Owner and the Contractor.
- 3.5 The Contract 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 the contract.

4. Delivery Of Works

- 4.1 The Contractor shall ensure that the Works are completed within the completion period stated in this contract and commence on the Start Date specified in this contract subject to clause 4.2.
- 4.2 At the sole discretion of the Contractor, the Works commencement date will be put back and/or the building period extended by whatever time is reasonable in the event that the Contractor claims an extension of time by giving the Owner written notice, (such written notice to include the reasons and requested length of the extension) where completion is delayed by an event beyond the Contractor's control.
- 4.3 Unless the Owner notifies the Contractor in writing within five (5) business days of the date of the Contractor's notice that it objects to the delay, the contract shall be extended by the time requested by the Contractor.
- 4.4 The Works shall be deemed to be practically completed when the Works carried out under this contract have been completed in accordance with the plans and specifications set out in this contract.

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4.5 The *Contractor* shall not be liable for any costs incurred by the *Owner* due to any unforeseen delays in completing the *Works*.

5. Defects

5.1 The *Contractor* shall rectify (at the *Contractor's* own expense) any defects or omissions that become apparent within the period of four (4) weeks commencing from the Completion Date (the "Completion Period") provided that the *Owner* notifies the *Contractor* in writing of any such defects no later than five (5) business days after the end of the Completion Period.

5.2 The *Contractor* shall remedy any defects brought to the *Contractor's* attention under clause 5.1 within thirty (30) days of receiving such notification in writing, unless the rectification works(s) required deem thirty (30) days to be an unreasonable period of time to complete the rectification work(s).

6. Owner's Responsibilities

6.1 It is the intention of the *Contractor* and agreed by the *Owner* that:

- (a) any building/construction sites will comply with all New South Wales occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and
- (b) the *Owner* shall obtain and pay for all planning and building approvals required for the *Works* prior to commencement of the *Works* by the *Contractor* unless otherwise agreed in writing between the *Owner* and the *Contractor*. In the event the *Contractor* agrees to obtain the approvals then the cost of those approvals shall be the *Owner's* responsibility and shall be in addition to the *Contact Price*; and
- (c) the *Owner* shall remove from the work area any furniture, personal effects or other property likely to impede the *Contractor* in order to minimise the risk of injury or any possible damage; and
- (d) the *Owner* shall provide the *Contractor* with clear and free access to the worksite to enable the *Contractor* to complete the *Works*.

7. Contractor's Responsibilities

7.1 The *Contractor* shall make good (at the *Contractor's* own expense) any loss or damage to the *Works* or property of the *Owner* caused by the negligence of the *Contractor*.

8. Risk

8.1 If the *Contractor* retains ownership of the *Materials* nonetheless, all risk for the *Materials* passes to the *Owner* on practical completion.

9. Damages

9.1 It shall be the *Owner's* responsibility to remove any furniture or personal effects from the work site prior to the *Works* commencing in order to minimise the risk of damage. The *Contractor* shall endeavour to rectify any damage to the worksite or property of the *Owner* caused by the *Contractor*, its employees, agents or subcontractors.

10. Underground Locations

10.1 Prior to the *Contractor* commencing the *Works* the *Owner* must advise the *Contractor* of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the *Owner* must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Telstra cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

10.2 Whilst the *Contractor* will take all care to avoid damage to any underground services the *Owner* agrees to indemnify the *Contractor* in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

10.3 It shall be the responsibility of the *Owner*, or the *Owner's* agent for the digging out of trenches, backfilling and the removal of excess soil from the work site.

11. Title

11.1 It is the intention of the *Contractor* and agreed by the *Owner* that ownership of *Materials* shall not pass until:

- (a) the *Owner* has paid all amounts owing for the particular *Materials*; and
- (b) the *Owner* has met all other obligations due by the *Owner* to the *Contractor* in respect of all contracts between the *Contractor* and the *Owner*.

11.2 Receipt by the *Contractor* of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the *Contractor's* ownership or rights in respect of *Materials* shall continue.

11.3 It is further agreed that:

- (a) until such time as ownership of the *Materials* shall pass from the *Contractor* to the *Owner* the *Contractor* may give notice in writing to the *Owner* to return the *Materials* or any of them to the *Contractor*. Upon such notice the rights of the *Owner* to obtain ownership or any other interest in the *Materials* shall cease; and

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- (b) the *Contractor* shall have the right of stopping the *Materials* in transit whether or not delivery has been made; and
- (c) if the *Owner* fails to return the *Materials* to the *Contractor* then the *Contractor* or the *Contractor's* agent may enter upon and into land and premises owned, occupied or used by the *Owner*, or any premises as the invitee of the *Owner*, where the *Materials* are situated and take possession of the *Materials*.

12. Intellectual Property

- 12.1 Where the *Contractor* has designed, drawn or written plans or a schedule of *Works* for the *Owner*, then the copyright in those plans, schedules, designs and drawings shall remain vested in the *Contractor*, and shall only be used by the *Owner* at the *Contractor's* discretion.
- 12.2 The *Owner* warrants that all designs or instructions to the *Contractor* will not cause the *Contractor* to infringe any patent, registered design or trademark in the execution of the *Owner's* order.

13. Default and Consequences of Default

- 13.1 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 one half percent (2.5%) per calendar month (and at the *Contractor's* sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the *Owner's* payment is dishonoured for any reason the *Owner* shall be liable for any dishonour fees incurred by the *Contractor*.
- 13.3 If the *Owner* defaults in payment of any invoice when due, the *Owner* shall indemnify the *Contractor* from and against all costs and disbursements incurred by the *Contractor* in pursuing the debt including legal costs on a solicitor and own client basis and the *Contractor's* collection agency costs.
- 13.4 Without prejudice to any other remedies the *Contractor* may have, if at any time the *Owner* is in breach of any obligation (including those relating to payment), the *Contractor* may suspend or terminate the supply of *Works* to the *Owner*. The *Contractor* will not be liable to the *Owner* for any loss or damage the *Owner* suffers because the *Contractor* exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

14. Privacy Act 1988

- 14.1 The *Owner* agrees for the *Contractor* to obtain from a credit reporting agency a credit report containing personal credit information about the *Owner* in relation to credit provided by the *Contractor*.
- 14.2 The *Owner* agrees that the *Contractor* may exchange information about the *Owner* with those credit providers either named as trade referees by the *Owner* or named in a consumer credit report issued by a credit reporting agency.
- 14.3 The *Owner* consents to the *Contractor* being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The *Owner* agrees that personal credit information provided may be used and retained by the *Contractor* for the purpose of protecting the *Contractor's* interests under this contract.
- 14.5 The *Contractor* may give information about the *Owner* to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the *Owner*; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the *Owner*.

15. Cancellation

- 15.1 The *Contractor* may cancel this contract (Subject to clause 15.2) if the *Owner*:
 - (a) fails to make payment due under this contract; or
 - (b) denies the *Contractor* access to the worksite to complete or undertake any *Works*; or
 - (c) become insolvent, goes into liquidation or administration.
- 15.2 Where the *Contractor* believes that the defaults in clause 15.1 can be rectified then the *Contractor* shall advise the *Owner* in writing that they have ten (10) working days (from the date of the letter) in which to do so. If the *Owner* fails to rectify any default within that period then the *Contractor* shall advise the *Owner* in writing that they are cancelling the contract.
- 15.3 If the contract is ended under this clause, the *Contractor* shall be entitled to a reasonable price for the *Works* carried out under this contract to the date the contract is ended (including the cost of any *Materials* delivered to the worksite or already ordered from suppliers but not yet paid for by the *Owner*).

16. Surplus Materials

- 16.1 Unless otherwise stated elsewhere in this contract:
 - (a) demolished *Materials* remain the *Owner's* property; and
 - (b) *Materials* which the *Contractor* brings to the site which are surplus remain the property of the *Contractor*.

Owner's Initials

17. Disputes

- 17.1 If the *Owner* or *Contractor* believes a dispute has arisen in relation to any matter under this contract, then that party must promptly give the other party written notice setting out the matter in dispute.
- 17.2 Both parties shall meet within fourteen (14) days of the giving of such notice to attempt to resolve the dispute.
- 17.3 In the event that the dispute cannot be resolved then the matter shall be referred to a mutually agreed third party or, failing agreement on a third party, to the Office of Fair Trading for assistance in the resolution of the dispute.

18. General

- 18.1 If any provision of this contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 18.3 The *Contractor* shall be under no liability whatever to the *Owner* for any indirect loss and/or expense (including loss of profit) suffered by the *Owner* arising out of a breach by the *Contractor* of this contract.
- 18.4 In the event of any breach of this contract by the *Contractor*, the remedies of the *Owner* shall be limited to damages. Under no circumstances shall the liability of the *Contractor* exceed the *Contract Price* of the *Works*.
- 18.5 Unless otherwise provided in writing the *Owner* shall not be entitled to set off against or deduct from the *Contract Price* any sums owed or claimed to be owed to the *Owner* by the *Contractor*.
- 18.6 Where more than one *Owner* has entered into this agreement, the *Owners* shall be jointly and severally liable for all payments of the *Contract Price*.
- 18.7 None of the *Contractor's* agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the *Contractor* in writing nor is the *Contractor* bound by any such unauthorised statements.
- 18.8 The *Contractor* may license or sub-contract all or any part of its rights and obligations without the *Owner's* consent. The *Owner* agrees and understands that they have no authority to give any instruction to any of the *Contractor's* sub-contractors without the authority of the *Contractor*.
- 18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.10 The failure by the *Contractor* to enforce any provision of this contract shall not be treated as a waiver of that provision, nor shall it affect the *Contractor's* right to subsequently enforce that provision.
- 18.11 This contract, the plans and specifications have precedence in that order if there is any inconsistency between them.

Owner's Initials

Contractor's Initials