

TERMS AND CONDITIONS FOR PROVISION OF SERVICES

1. BASIS OF CONTRACT

- 1.1 These terms apply exclusively to every Contract for the provision of Services by Lantrak to the Customer and cannot be varied or replaced by any other terms and conditions (including the Customer's terms and conditions of purchase, if any) without Lantrak's prior written consent.
- 1.2 Any Quotation is:
 - (a) valid for 30 days,
 - (b) an invitation only to the Customer to place an order for the Services based upon that Quotation, and
 - (c) subject to the Customer offering to enter into a Contract and accepting these Terms.
- 1.3 Any additional terms in Lantrak's Quotation ("Special Conditions") form part of these Terms. If there is any inconsistency between the Special Conditions and these Terms, the Special Conditions will prevail.
- 1.4 It is the Customer's responsibility to accurately disclose to Lantrak the nature, weight, dimensions and type of Material involved in the provision of the Services ("Material Specifications"). Lantrak may rely on the Material Specifications when quoting for and arranging the provision of the Services.
- 1.5 The Contract is accepted by Lantrak when Lantrak confirms its acceptance of an order from the Customer in writing or electronic means or provides the Customer with the Services.
- 1.6 Lantrak is not a common carrier and reserves the right to refuse to quote or provide Services for any person or for any type of Material.
- 1.7 The Customer agrees that Lantrak may, at its discretion, subcontract the whole or any part of the Services provided by it. Where Services are performed by Sub-Contractors, these Terms apply as if the Sub-Contractors were Lantrak.
- 1.8 The following clauses do not apply to the Services that are for the supply of Material to the Site – clauses 1.4, 2.4, 5.7, 6.1 to 6.5 (both inclusive), 7.1 to 7.4 (both inclusive), 8, 9.12 and 9.13.
- 1.9 The following clauses do not apply to Services that are for the removal of Material from the Site – clauses 5.6, 10.7 and 15.7.

2. PRICING

- 2.1 Unless otherwise agreed in writing, the price payable for the Services is as specified in the CSA.
- 2.2 Unless otherwise specified by Lantrak, prices quoted for the supply of the Services:
 - (a) exclude GST and any other taxes or duties imposed on or in relation to the Services (which are additionally at the Customer's cost); but
 - (b) include the cost of Equipment hire, provision of Operators, and the supply and/or removal of the Material (as appropriate).
- 2.3 If there is any change in Lantrak's costs incurred in providing the Services, Lantrak may vary its price to take account of any such change by notifying the Customer.
- 2.4 Lantrak may increase the price if the Customer has not correctly and accurately declared the Material Specifications.
- 2.5 If the Customer requests any changes or additions to the Services, Lantrak may:

- (a) reject the request for the variation;
- (b) increase the price to account for the variation; or
- (c) provide a revised quotation for the Services.

3. PAYMENT

- 3.1 If a credit account is extended by Lantrak to the Customer, then payment for the Services must be made by the Customer to Lantrak in accordance with the terms of Lantrak's invoice. Otherwise, payment for the Services must be made within 30 days of the date of Lantrak's invoice.
- 3.2 If credit is not extended by Lantrak to the Customer, then the Customer must pay for the Services either:
 - (a) before commencement of the Services; or
 - (b) immediately upon completion of the Services.
- 3.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3.4 Payment terms may be revoked or amended at Lantrak's sole discretion immediately upon giving the Customer written notice.
- 3.5 Notwithstanding any other provision of this clause 3, Lantrak reserves the right to require payment of a deposit prior to performing the Services.
- 3.6 All payments from the Customer to Lantrak must be made without any deduction or set-off.
- 3.7 If the Customer is not satisfied with any aspect of Lantrak's invoice, it must notify Lantrak in writing within 7 days of the date of Lantrak's invoice. If the Customer does not provide notice in accordance with this clause 3.7, it is deemed to have accepted the invoice.

3.8 Waiting Time

- The Customer must pay Lantrak the Waiting Time Fee if:
- (a) Lantrak is providing contract cartage services;
 - (b) Lantrak or its Sub-Contractors experience a delay of at least 30 minutes in performing the Services, excluding delays due to inclement weather, and to the extent that it inhibits the contractor from providing the services as priced and where the delay is due to no fault of Lantrak or its Sub-Contractor; or
 - (c) the Customer has not provided Lantrak at least 1 hour prior notice to the estimated commencement time for the provisions of the Services that a delay will occur to the commencement of the provision of services.
 - (d) Waiting time charges will not substitute the responsibility of the customer to pay a minimum hire where a minimum hire charge is applicable at the full hourly hire rate

4. PAYMENT DEFAULT

- 4.1 If the Customer defaults in payment by the due date of any amount payable to Lantrak, then all money which would become payable by the Customer to Lantrak at a later date on any account, becomes immediately due and payable without the requirement of any notice, and Lantrak may, in addition to any other remedy available to it:
 - (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4% for the period from the due date until the date of payment in full;

- (b) charge the Customer for and the Customer must indemnify Lantrak from, all costs and expenses (including legal costs on an indemnity basis) incurred by it resulting from the default, or in taking action to enforce compliance with the Terms, or to recover any sum due;
 - (c) cease or suspend for such period as Lantrak thinks fit, provision of any further Services to the Customer;
 - (d) by written notice to the Customer, terminate any Contract with the Customer so far as unperformed by Lantrak;
- without effect on Lantrak's accrued rights under any Contract.

4.2 Clauses 4.1(c) and (d) may also be relied upon, at Lantrak's option, where the Customer becomes bankrupt or enters into any scheme of arrangement has a liquidator or similar functionary appointed in respect of its assets.

4.3 Lantrak may in its absolute discretion terminate or suspend any Contract or proposed Contract with the Customer where the value of the Services performed or to be performed and which is either unbilled or for which payment is outstanding exceeds the Credit Limit.

5. OWNERSHIP AND RISK OF MATERIAL

5.1 At no time does Lantrak 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.

5.2 The Customer is responsible for all extra costs and risks incurred by Lantrak and for any and all damage sustained by Lantrak in reliance on the Material Specifications.

5.3 Where Lantrak collects Material from the Customer, or delivers Material to the Customer (as appropriate), the Customer warrants that it is the owner of the Material or is authorised and entitled to request the Services in relation to the Material.

5.4 The Customer must immediately notify Lantrak of any actual or attempted ownership claim or levy of execution by third parties concerning the Material.

5.5 The Customer is responsible for satisfying itself as to the quality and type of Material (and for raising any concerns with Lantrak) prior to the collection of the Material from the Customer, or prior to the delivery of the Material to the Customer (as appropriate).

5.6 Acceptance of the Material onto the Site is acknowledgement that the Material satisfies the Material Specifications.

5.7 The Customer must comply with all relevant State or Territory legislation and guidelines (as applicable) regarding sampling and/or classifying of the Material for transport, supply, disposal and re-use.

6. PRESCRIBED INDUSTRIAL WASTE

6.1 Material containing Prescribed Industrial Waste may be tendered to Lantrak in accordance with this clause 6 or otherwise in accordance with these Terms. Any Material which contains asbestos will be deemed to be Prescribed Industrial Waste.

6.2 Lantrak reserves the right to accept or reject Material containing Prescribed Industrial Waste in its complete discretion.

6.3 Material containing Prescribed Industrial Waste will only be accepted by Lantrak if the Customer provides a copy of a current exemption under the applicable State or Territory environmental protection legislation to Lantrak prior

to its delivery.

6.4 Where the Material contains Prescribed Industrial Waste (and a certificate of exemption has not been obtained or provided to Lantrak), Lantrak may, in its absolute discretion:

- (a) refuse to provide or cease providing the Services; and/or
- (b) dispose of the Material at an authorised Prescribed Industrial Waste disposal facility at the Customer's cost and risk.

6.5 Where the Material contains Prescribed Industrial Waste (and a certificate of exemption has not been obtained or provided to Lantrak), the Customer will be liable to indemnify Lantrak for any loss or damage occasioned either directly or indirectly to Lantrak, its Sub-Contractors and any third parties.

7. CONTAMINATION OF MATERIAL

7.1 The Customer warrants that the Material will not be contaminated and will not depart from the Material Specifications concerning type of Material, unless an environmental site assessment has first been conducted and provided to Lantrak. The Customer must pay Lantrak for the costs associated with the storage, handling and re-delivery of the Material or the return of the Material to the collection site if the Material is contaminated or does not comply with the Material Specifications, and is rejected by the Customer at the site of delivery.

7.2 Material will be deemed to be contaminated or potentially contaminated if:

- (a) it has been mixed with any waste material;
- (b) it consists of, or contains material of unknown origin brought onto the Site;
- (c) it originates from sites where former uses include industrial, commercial, mining or agricultural activities;
- (d) it has had manufactured chemicals applied; or
- (e) it was located in a Fire Ant Zone.

7.3 Where the Material is considered to be contaminated, Lantrak reserves the right to manage it in accordance with the waste hierarchy regulations applicable in the relevant State or Territory, at the Customer's cost.

7.4 Where the Material is considered to be contaminated (and the environmental site assessment has not been conducted or provided to Lantrak), the Customer agrees to indemnify Lantrak for any loss or damage occasioned either directly or indirectly to Lantrak, its Sub-Contractors and any third parties.

8. FILL MATERIAL

8.1 All material designated "Fill Material" or "Clean Fill" must meet all applicable environmental legislation in the relevant State or Territory.

9. SITE REQUIREMENTS

9.1 The Customer must provide on-site staff or contractors to supervise and manage the Site and the provision of the Services ("Supervisors"). If required by legislation, the Customer must provide Lantrak or its Sub-Contractors with site specific induction.

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

9.3 Lantrak will deem any Supervisors to be authorised by the Customer to request and approve all change to pricing and specifications, unless Lantrak is specifically notified otherwise by the Customer in

writing.

- 9.4 At no time does Lantrak take or accept any ownership of or responsibility for the Site. All risk and liability in and relating to the Site remains with the Customer at all times.
- 9.5 The Services are provided under the control, supervision and direction of the Customer. Lantrak 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.
- 9.6 Unless otherwise specified, the Customer is responsible for directing Lantrak or its Sub-Contractor at the Site, and for the safe loading and unloading of the Material. The customer must prepare a risk assessment and SWMS for the provision of the services that is specific to the Site.
- 9.7 The Customer must ensure and warrants that the Site specified for the removal and/or disposal of the Material and the provision of the Services meets with all applicable occupational health and safety legislation and guidelines.
- 9.8 The Customer must not direct the Material to be carried in a manner that exceeds statutory transport limits and road rules.
- 9.9 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.
- 9.10 The Customer must make all enquiries and notify Lantrak as to the existence and location of any overhead and underground cables, pipes and/or other subterranean services and utilities at the Site ("Utilities").
- 9.11 The Customer agrees to indemnify Lantrak and the Sub-Contractors against all costs, claims, damage, fines, expenses and loss suffered by Lantrak or its Sub-Contractors as a result of the Customer's failure to inform Lantrak of the existence and location of the Utilities.
- 9.12 If requested by Lantrak, the Customer must conduct a preliminary Site investigation ("Preliminary Site Investigation") and provide the results to Lantrak. The Preliminary Site Investigation may include, but is not limited to:
- (a) preparing or obtaining investigation reports for the Site;
 - (b) preparing or obtaining soil reports and Material condition reports;
 - (c) supplying history of the Site and the Material;
 - (d) preparing or obtaining sampling and analytical results or other technical reports of contaminants or potential contaminants and other constituent matter in the Material.
- 9.13 The Customer acknowledges that Lantrak and its Sub-Contractors may rely on the information obtained from the Preliminary Site Investigation. The Customer agrees to indemnify and keep Lantrak harmless from all costs, claims, damage, fines, expenses and loss suffered by Lantrak or its Sub-Contractors as a result of incorrect or incomplete information obtained from the Preliminary Site Investigation.
- 9.14 The Customer grants to Lantrak and its Sub-Contractors an irrevocable licence to enter upon the Site at any time for the purpose of removing the Equipment.

10. DELIVERY AND COMPLETION OF SERVICES

- 10.1 Any period or date for completion of the Services stated by Lantrak is intended as an estimate only and is not a contractual commitment. Lantrak will use its reasonable endeavours to meet any estimated dates for completion of the Services. Lantrak is not liable for any delay in completing the Services.
- 10.2 The Customer must provide suitable, practical and safe means of access and egress to the Site.
- 10.3 Lantrak's obligations in relation to the provision of the services under these Terms is limited to using reasonable skill and care to ensure that the authorised independent contractors and agents who Lantrak engages to provide the Services are appropriately qualified, instructed and trained in relation to the provision of the Services.
- 10.4 The Customer agrees that Lantrak may determine in its absolute discretion:
- (a) the route for Cartage of the Material; and
 - (b) the method of handling the Material.
- 10.5 Lantrak will collect from or deliver the Material to the Customer at the Site.
- 10.6 The Customer or its Supervisor must sign Lantrak's Docket Book upon completion of the Services. Lantrak's Docket Book will be prima facie proof of the contents stated therein, and the completion of the Services.
- 10.7 If the Customer fails or refuses to accept delivery of the Material, or Lantrak is unable to effect delivery for any reason other than the fault of Lantrak, the Customer must pay Lantrak for all costs associated with storage, handling and re-delivery of the Material, or return of the Material to the collection Site.
- 10.8 The Customer may be charged for any delay occasioned to Lantrak when attempting to load or unload the Material, other than arising from the fault of Lantrak.
- ### 11. INSPECTION OF SERVICES
- 11.1 The Customer must inspect the Site and satisfy itself that the Services have been provided at the Site. If the Customer is not so satisfied, it must notify Lantrak in writing within 2 days of the completion of the Services.
- 11.2 If the Customer fails to give the notice as required in clause 11.1, it is deemed to have accepted the provision of the Services and will be bound to pay for them.
- ### 12. DRY HIRE OF EQUIPMENT
- 12.1 This clause 12 only applies to Dry Hire.
- 12.2 The following clauses do not apply to Dry Hire; 2.2(b), 2.3, 2.4, 3.8, 5, 6, 7, 8, 9, 10, 11 and 15.7.
- 12.3 Lantrak agrees to grant the Customer an exclusive licence to use the Equipment in accordance with the Contract.
- 12.4 The Customer agrees:
- (a) to use the Equipment in accordance with and solely for the use outlined in the Contract;
 - (b) not to use the Equipment for any use that is prohibited by Lantrak 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 Lantrak.
- 12.5 **Warranties**
- (a) The Customer warrants to Lantrak that:
 - (i) every person who drives or operates the Equipment holds and maintains a full

license of the required class, and will operate the Equipment in accordance with the statutory requirements in every jurisdiction in which the Equipment is or may be kept or used; and

(ii) it holds the Policy referred to in clause 12.10(a).

(b) To the extent permitted by law, no representation or warranty, express or implied, is given by Lantrak to the Customer:

(i) as to the condition or suitability of the Equipment for any purpose of the Customer; or

(ii) that the Equipment will meet any requirements of the Customer.

12.6 Customer Acknowledgements

(a) The Customer acknowledges that: it has no ownership interest in the Equipment;

(b) it is satisfied with the present order and condition of the Equipment;

(c) it is satisfied that Equipment in its present condition meets the Customer's requirements;

(d) it uses the Equipment at its own risk; and

(e) it has no right, title, estate or interest in the Equipment.

12.7 Customer Obligations

The Customer must:

(a) maintain the Equipment in good order and condition at its own expense, including servicing and maintaining it in accordance with the manufacturer's specifications and recommendations;

(b) replace or repair any damage to the Equipment at its own expense and in accordance with Lantrak's or the manufacturer's specifications and recommendations;

(c) comply with all relevant statutory requirements and regulations in relation to the use of the Equipment;

(d) operate the Equipment in accordance with directions provided by the manufacturer, Lantrak or a qualified repairer;

(e) keep the Equipment secure;

(f) not make any Claim against Lantrak, its officers, servants or agents in respect of any damage, injury or loss to any persons using the Equipment;

(g) not move the Equipment from the Site without the prior written consent of Lantrak;

(h) allow Lantrak to inspect the Equipment at any reasonable time upon reasonable notice (except in the case of emergency when no notice shall need to be given);

(i) pay full and reasonable compensation for any damage or wear to the Equipment which, in the opinion of Lantrak, was caused by the failure of the Customer to properly operate or adequately maintain the Equipment;

(j) return the Equipment if and when demanded by Lantrak in the event of the Customer breaching any condition of the Contract or if any of the matters set out in clause 12.8(a) occur; and

(k) immediately notify Lantrak of any:

(i) damage to the Equipment; or

(ii) accident arising from or pertaining to the Equipment and use of the Equipment.

12.8 Termination

(a) Lantrak may terminate the Contract if, in the opinion of Lantrak:

(i) the Customer causes or allows to be caused damage to the Equipment; or

(ii) the Equipment is being operated unsatisfactorily.

(b) Upon termination of the Contract, the Customer must:

(i) immediately stop all use of the Equipment;

(ii) restore and reinstate the Equipment to the state, order and condition as existed on the commencement of the hire period in accordance with the Customer's obligations in the Contract; and

(iii) return the Equipment to Lantrak or at its direction.

(c) If the Customer fails to return possession of the Equipment in accordance with clause 12.8(b)(iii) then the Customer authorises Lantrak to enter onto the Site for the purpose of collecting the Equipment and Customer shall be responsible for Lantrak's costs of such collection which will be a liquidated debt, payable on demand.

12.9 Pricing and Costing

(a) In addition to the price specified in the Contract or the CSA, the Customer agrees to pay the full cost of:

(i) any Excess Usage Costs;

(ii) all cleaning, fuel, grease, preventative or minor servicing, attention and running repairs required to the Equipment;

(iii) repairing any damage to the Equipment caused by or arising from the use of the Equipment other than fair wear and tear including damage to tyres and track gear; or

(iv) any loss of the whole or any portion of the Equipment, whether due to theft or other cause.

(b) If in the opinion of Lantrak 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 of the hire period, Lantrak 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.

(c) Lantrak may offer the Customer a stand down rate in accordance with any stand down policy specified in the Contract or the CSA.

12.10 Insurance

(a) The Customer must effect and maintain at all times and with an insurer approved by Lantrak, which approval shall not be unreasonably withheld:

(i) a public liability insurance policy for not less than the amount of 20 million dollars (or any greater amount

reasonably required by Lantrak) in respect of any single claim arising out of the activities of the Customer, covering all third party claims arising out of:

(A) loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property; and

(B) death, injury to, or disease of persons; and

(ii) an employers' liability and workers' compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Customer arising:

(A) by virtue of any statute relating to workers' or accident compensation or employers' liability; or

(B) at common law;

(iii) a policy for loss and damage of the Equipment from risks reasonably specified by Lantrak from time to time, including fire, malicious damage, impact by vehicles and theft, for its full replacement value,

such policies referred to collectively as "**the Policy**".

(b) If requested by Lantrak, the Customer must provide Lantrak with:

(i) a certificate of currency for the Policy which clearly confirms the requirements of clause 12.10(a):

(A) prior to the commencement of the hire period; and

(B) at any other time upon request by Lantrak; and

(ii) a copy of the Policy upon request by Lantrak.

(c) The Customer must promptly notify Lantrak if:

(i) an event occurs which may give rise to a claim under or prejudice the Policy; or

(ii) the Policy is cancelled.

(d) The Customer must not do anything or allow anything to be done which may:

(i) prejudice any insurance held by Lantrak in connection with the Equipment; or

(ii) increase the premium payable by Lantrak for any insurance held in connection with the Equipment.

(e) The Customer must effect and maintain all other insurances in a manner and to such extent which is reasonable and customary for an organisation engaging in Dry Hire of the kind referred to and permitted by the Contract.

13. SECURITY INTEREST

13.1 Expressions used in this clause 13 and in the PPSA have the same meanings as when used in the PPSA.

13.2 As security for the Customer's obligations under the Contract, including the payment of any money by the Customer to Lantrak, the Customer charges all its interests in personal property of whatever description and wherever situated both now and in the future to Lantrak.

13.3 The Customer acknowledges that the Contract may be a PPS Lease and create a security interest in

favour of Lantrak for the purposes of the PPSA, and:

(a) Lantrak 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 Lantrak 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 Lantrak with all assistance reasonably required in order for Lantrak 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 Contract: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135.

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

13.5 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 Contract.

14. ACKNOWLEDGEMENTS

14.1 The Customer acknowledges and agrees that:

(a) no information representation or warranty by or on behalf of Lantrak which is not expressly set out in these Terms was supplied or made concerning these Terms with the intention or knowledge that it would be relied upon by the Customer;

(b) no such information, representation or warranty has been relied upon; and

(c) these Terms constitute the entire agreement between the parties concerning the Services and supersede all previous negotiations and agreements.

15. LIABILITY

15.1 Lantrak is not a common carrier and accepts no liability as such.

15.2 To the extent permitted by law, Lantrak excludes all warranties, conditions, guarantees or terms, other than those expressly set out in these Terms 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).

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

(a) re-providing the Services; or

(b) reimbursing the Customer for the cost of having the Services re-supplied by a third party; or

(c) refunding to the Customer amounts paid by the Customer to Lantrak for the defective Services.

15.4 Lantrak is not liable for any indirect or consequential

- losses or expenses suffered by the Customer in connection with the provision of the Services, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill, or claim
- 15.5 Lantrak is not liable to the Customer, and the Customer must indemnify Lantrak against any third party claims, for any failure to comply with the Customer's directions in relation to the Services, 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.
- 15.6 Provided Lantrak exercises its reasonable endeavours to perform the Services by the agreed delivery date, and has otherwise complied with its obligations under these Terms, Lantrak is not liable for any loss or damage suffered by the Customer for failure to meet any agreed delivery date or suspension of the provision of the Services.
- 15.7 Lantrak is not liable for any loss of, damage to, or deterioration to the Material, for any reason, howsoever caused through the provision of the Services, except where caused by Lantrak's negligence.
- 15.8 The Customer is liable, and must indemnify Lantrak from and against any loss arising out of a breach of these Terms by the Customer.
- 15.9 The Customer must indemnify and keep Lantrak harmless from all costs, claims, damage, fines, expenses and loss suffered by Lantrak as a result of any breach of the Customer warranties set out in these Terms.
- 15.10 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of Services which cannot be excluded, restricted or modified.
- 15.11 In all instances, other than as expressly set out in these Terms, the total aggregate liability of Lantrak to the Customer for loss or damage (including indirect and consequential loss or damage), caused by, resulting from, or in relation to the Services, including whether arising from breach of contract, negligence, or any other tort, in equity or otherwise, and whether or not Lantrak was advised of the possibility of such loss or damage, is limited (to the extent permitted by law) to an amount equal to two times the fees paid by the Customer to Lantrak in respect of the Services which the claim relates.
- 15.12 To the extent permitted by law, the Customer may not make any claim under these Terms unless details of the claim have been notified to Lantrak within the times specified in these Terms, or if no time is specified, within 2 months from the date the Services have been completed or accepted by the Customer.
- 15.13 Where there is more than one Customer party to these Terms the limit of liability will have to be allocated among the Customers. It is agreed that, save where the allocation is expressly stated in this Agreement, such allocation will be entirely a matter for the Customers and the Customers shall be under no obligation to inform Lantrak of the allocation. If (for whatever reason) no such allocation is agreed, the Customers shall not dispute the validity, enforceability or operation of the limit of liability contained in clause 14 or otherwise contained in these Terms on the ground that no such allocation was agreed.
- 15.14 Lantrak's liability to the Customer in respect of breach of contract or breach of duty or fault or negligence or otherwise whatsoever arising out of or in connection with these Terms shall be limited to that proportion of the loss or damage (excluding interest and costs) suffered by the Customer, which is ascribed to Lantrak by a court of competent jurisdiction allocating proportionate responsibility to Lantrak having regard to the contribution to the loss and damage in question of any other person responsible and/or liable to the Customer for such loss and damage. This provision shall have no application to any liability which cannot lawfully be excluded or limited. For the purpose of assessing the contribution to the loss and damage in question of any other person pursuant to this clause, it is agreed that no account shall be taken of any limit imposed or agreed on the amount of liability of such person by any agreement (including any settlement agreement) made before the loss and damage in question occurred.
- 15.15 To the extent permitted by law, the Customer releases and indemnifies Lantrak against all claims for loss, damage or injury arising from or in any way connected with the Services, except to the extent caused by Lantrak's negligence or breach of these Terms.
- 16. CANCELLATION**
- 16.1 If through circumstances beyond Lantrak's control it is unable to provide the Services, then Lantrak may by written notice to the Customer:
- extend any date for completion; or
 - cancel the Customer's order (even if it has already been accepted).
- 16.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Lantrak after it has been accepted by Lantrak.
- 16.3 If Lantrak accepts the cancellation of an order by the Customer, then Lantrak is entitled to levy a cancellation fee in accordance with the CSA.
- 17. FORCE MAJEURE**
- 17.1 A party will be relieved from its obligations under this Contract to the extent that the performance of such obligation is hindered or prevented by Force Majeure. "Force Majeure" means any event outside the reasonable control of the party affected by it, which could not have been avoided by that party exercising reasonable care.
- 17.2 A party affected by Force Majeure must promptly notify the other party of the event or circumstances and of the expected duration of the Force Majeure and if a party has notice of any event or circumstance which is not, but may become an event of Force Majeure, that party will notify the other of it.
- 17.3 The party affected by Force Majeure will take all reasonable steps to alleviate or remedy the effect of the Force Majeure. After an event of Force Majeure ceases to have effect upon a party, that party will notify the other party of the cessation and the obligations of the other party will resume.
- 17.4 Force Majeure does not apply to an obligation to pay money.

18. MISCELLANEOUS

- 18.1 The law of Victoria from time to time governs the Terms.
- 18.2 Lantrak's failure to enforce any of these Terms shall not be construed as a waiver of any of Lantrak's rights.
- 18.3 If any of the Terms are unenforceable, it shall be read down so as to be enforceable, or if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining Terms.
- 18.4 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.
- 18.5 In providing the Services to the Customer under Terms, Lantrak is acting in the capacity of independent contractor. These Terms do not constitute any partnership, trust, agency, joint venture or employment relationship between the parties.

19. DEFINITIONS

In these Terms:

"**Cartage**" means the carting or transporting of Material to or from the Site or between the Sites by Lantrak for the Customer;

"**Contract**" means any contract entered into for the provision of Services by Lantrak to the Customer;

"**Credit Limit**" means the limit of credit extended by Lantrak to the Customer, as advised to the Customer from time to time;

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

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

"**Dry Hire**" means the hire of any Equipment by the Customer without an Operator;

"**Equipment**" means the vehicles and machinery owned or operated by Lantrak or the Sub-Contractors and used in the provision of the Services;

"**Excess Usage Costs**" means the charge the Customer agrees to pay Lantrak for excessive or abnormal usage of Equipment. This charge will be calculated in accordance with the Contract or the CSA and can include excessive hours of operation of the Equipment or abnormal wear on tyres, tracks, buckets, electrical or ground engagement tools;

"**Lantrak**" means:

(a) Lantrak Pty Ltd (ABN 14 163 639 727); and

(b) any other entity nominated by Lantrak as a "Lantrak" entity for the purpose of these Terms, severally (but not jointly) to the extent that they provide Services to the Customer.

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

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth);

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

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

"**Prescribed Industrial Waste**" means prescribed industrial waste, hazardous waste, regulated waste or any other analogous waste description as defined in the relevant environmental protection legislation and regulations applicable in the State or Territory in which the Services are being performed;

"**Quotation**" means any written or verbal quotation provided by Lantrak to the Customer concerning the proposed provision of the Services;

"**CSA**" means the Customer Service Agreement that Lantrak provides to the Customer prior to the provision of the Services that outlines the usual and current schedule of rates and charges for the Services in the relevant State or Territory as amended from time to time;

"**Services**" means all services supplied by Lantrak to the Customer, whether itself or through its Sub-Contractors, and includes (as appropriate):

(a) booking services;

(b) project management services;

(c) the provision of Equipment with or without Operators;

(d) excavation and earth moving services;

(e) Cartage;

(f) supply and/or removal and disposal and/or re-use of the Material; and

(g) Dry Hire;

"**Sub-Contractor**" means any person who performs the Services pursuant to an arrangement with Lantrak;

"**Terms**" means these Terms and Conditions for Provision of Services.

"**Waiting Time Fee**" means an amount equal to the time of the delay experienced by Lantrak or its Sub-Contractors in performing the Services multiplied by 50% of the applicable hourly rate payable to drivers in accordance with the Customer's CSA excluding any other allowance or benefit.