

**These Terms of Engagement ("Terms") are the terms and conditions referred to in the proposal ("Proposal") of Mainmark Ground Engineering Pty Ltd ("MAINMARK") to the person, company or other entity named in and to whom the Proposal is addressed ("Client").**

## 1. CONTRACT:

- 1.1 By signing the **"ACKNOWLEDGMENT AND ACCEPTANCE"** section of these Terms the Client accepts the Proposal and a contract shall come into existence comprising the Proposal (including Statutory Provisions as defined in Term 1.2) and the Terms **"Contract"** for the performance of the services and the provision of the materials and the other things as set out in the Proposal under the heading **"PROPOSED SOLUTION"** (collectively **"Services"**) for the total price as set out in the Proposal under the heading **"PRICING"** which price is subject to and conditional upon any exclusions and assumptions set out under the heading **"PRICING ASSUMPTIONS AND EXCLUSIONS"** ("Price"). The Contract supersedes all previous submissions, representations, warranties, understandings. If there is any ambiguity, discrepancy or inconsistency between the two documents then the following order of precedence shall apply, first the Proposal; and second the Terms.
- 1.2 In the event that statutory provisions apply to the provision of the Services in the State/Territory in which the Property is located ("Statutory Provisions") then these will be attached to the Proposal and form part of the Contract. Notwithstanding the order of precedence set out in Term 1.1 if there is a Statutory Provision that cannot be altered by agreement then in the event that any provision of these Terms shall be in conflict or inconsistent with the Statutory Provisions then the Statutory Provisions shall prevail.
- 1.3 Words and phrases defined in the Proposal shall in these Terms have the same meanings.
2. **CANCELLATION:** The Client shall not cancel the Contract unless MAINMARK agrees in writing. The Client agrees that if the Contract is cancelled less than 5 days before the scheduled start date for the provision of the Services, MAINMARK is entitled to retain the Deposit paid or in the event that a Deposit has not been paid to claim from the Client a cancellation fee of an equivalent amount to the Deposit calculated in accordance with Term 4.1.
3. **GST**
  - 3.1 The parties acknowledge that all amounts payable under the Contract are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply shall be the amount specified in the Contract plus GST.
  - 3.2 If GST is payable on a Taxable Supply made by one party (Supplier) to another party (Recipient) then the Supplier shall provide the Recipient with a Tax Invoice before the Recipient is required to pay any amount to the Supplier in respect of the Taxable Supply.
  - 3.3 Words or expressions used in this Term 3 which are defined in the New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as in this Term.
4. **TERMS OF PAYMENT**
  - 4.1 The deposit payable under the Contract shall be ten percentum (10%) of the Price and if a deposit is regulated by statute or regulation then in the maximum amount so payable but not exceeding 10% of the Price ("Deposit").

- 4.2 Upon completion of the Services at the Client's property or site (**"Property"**) MAINMARK shall deliver at that time to the Client a Tax Invoice for the balance of the Price. The balance of the Price shall be payable within 14 days following delivery of the Tax Invoice.
- 4.3 In the event that the Client has not paid to MAINMARK the Deposit or the balance of the Price in full on or before the due date for payment then MAINMARK may make a payment claim under the Building and Construction Industry Security of Payment Act 1999 (NSW) or the equivalent Security of Payment legislation in the State or Territory in which the Services are performed (if applicable).
- 4.4 If the Client disputes the whole or any portion of any amount due to MAINMARK, the Client must pay the portion of the amount which is not disputed and shall notify MAINMARK in writing within 5 days of completion of the Services of the reasons for disputing the amount due. The Client agrees that if MAINMARK is not so notified the Client will be deemed to have unqualifiedly accepted the amount due to MAINMARK. If it is resolved or determined that some, or all, of the amount disputed by the Client ought properly to have been paid at the time it was due to MAINMARK, then the Client shall pay the amount finally resolved or determined together with interest on that amount in accordance with Term 6.
- 4.5 The Client shall not be entitled to withhold payment of any amount due to MAINMARK on the basis that it has not received payment from a third party.
- 4.6 The Price has been determined on the basis of the Client not withholding any part of the Price as a retention or guarantee for the performance of the Works unless there has been a specific provision in those respects included in the Proposal.
5. **ADDITIONAL COSTS**
  - 5.1 Where there is any delay to scheduled Services due to insufficient access to the Property or any other circumstances outside of MAINMARK's reasonable control, then MAINMARK:
    - (a) will promptly, upon becoming aware of any such event which has or may give rise to a delay, notify the Client of the event, the estimated delay and the estimated increased cost; and
    - (b) may charge the Client an additional standby rate which rate is set out in the Proposal under the heading **"PRICING"**.
  - 5.2 Where the Client fails to perform, or inadequately performs any works which are the responsibility of the Client, MAINMARK may perform such work in addition to the Services and may charge the Client for such work at cost plus 25%.
6. **LATE PAYMENT CHARGES:** If any amount is withheld or not paid by the Client to MAINMARK by the due date for payment:
  - (a) an administration charge of \$60 per month will be added to the overdue amount on the day immediately following the due date and on each monthly anniversary of that due date; and
  - (b) interest on the overdue amount at a rate of nine percentum per annum (9%) shall be payable by the Client to MAINMARK from the day immediately following the due date, up to and including the date on which the payment is made in clear funds.

- 7. DAYWORK & SCHEDULES OF RATES:** Where Services are carried out on a Schedule of Rates basis (as specified, if at all, in the Proposal), the Client shall be responsible for requesting, checking and signing MAINMARK's work record sheets daily. Any disputes concerning the Services must be recorded thereon daily. Once recorded and signed (and save for any disputes noted thereon), the Client shall not be entitled to contest the correctness of those records and the subsequent payments to MAINMARK. Should the Client fail to sign those work record sheets (noting any dispute if necessary) for any reason, such work record sheets shall nevertheless be deemed to be accepted by the Client as a true and fair record of the time expended and materials supplied by MAINMARK.
- 8. PROPERTY ACCESS & DELAYS**  
The Client shall be responsible, at the cost of the Client to provide MAINMARK with safe, suitable and timely access to the Property and work area for MAINMARK's vehicles, materials, personnel, plant and equipment.
- 8.2 The Client acknowledges and agrees that MAINMARK's vehicles, materials, plant and equipment located at the Property whilst the Services are being provided or otherwise shall always remain the absolute property of MAINMARK and the Client shall have no right, title or interest in MAINMARK's property.
- 9 HOURS OF WORK**  
9.1 The Services shall be carried out between the hours of 0700 and 1700 from Monday to Friday (excluding statutory holidays) or otherwise as set out in the Proposal under the heading "PROGRAMME & WORKING HOURS" or as required by law. MAINMARK may, at its discretion, work additional or altered hours and/or days at no cost to the Client.
- 9.2 If additional or altered hours or days are requested by the Client and additional costs are incurred by MAINMARK as a result of such request, the Client shall be liable to pay such increased costs as notified by MAINMARK.
- 10. EXCLUSIONS:** The Services and the Price excludes those items set out in the Proposal under the heading "PRICING ASSUMPTIONS AND EXCLUSIONS" and those items shall be at the Client's sole responsibility and cost.
- 11. RESPONSIBILITY FOR INFORMATION:** The Client shall provide MAINMARK with all information that is relevant to the delivery of the Services by MAINMARK (including in relation to physical conditions of, on or under the site at the Property where the Services are to be delivered and its immediately affected, or likely affected surroundings together with any other information reasonably requested by MAINMARK). The Client warrants that all information provided to MAINMARK is true and accurate in all respects and MAINMARK shall have no liability to the Client for any defects in the Services due to lack of instructions/information (including geotechnical information) from, or insufficient/incomplete/incorrect/inaccurate documentation and information being provided by or on behalf of the Client.
- 12. RESPONSIBILITY FOR SUPERVISION:** The Client or the nominated representative of the Client must be available throughout the provision of the Services, to answer queries, give directions and to ensure the suitability of the Services relative to the Property.
- 13. VARIATIONS**  
13.1 Any variation to the Services must first be agreed in writing by the Client and MAINMARK.
- 13.2 If either the Client or MAINMARK proposes a variation to the Services the party so proposing must give a written notice to the other party containing a description of the proposed variation and the reason for such variation (and where the variation is proposed by MAINMARK, details of any impact of the variation on the time and/or costs incurred to complete the Services).
- 13.3 If the variation is proposed by the Client, MAINMARK must in response to receipt of a notice provided by the Client under Term **13.2** provide the Client with details of:
- (a) the cost of implementing the proposed variation which shall be the cost to MAINMARK plus 25%, unless otherwise agreed;
  - (b) any estimated delay to the performance of the Services which may result from carrying out the variation; and
  - (c) any increase to the Price which may result from carrying out the variation.
- 13.4 The parties shall thereupon negotiate the variation of the scope of the Services and any increase in the Price to carry out the variation and any adjustment required to the time for completion of the Services prior to MAINMARK commencing the variation.
- 14. INSURANCES:**  
14.1 In respect of the Services, MAINMARK will maintain Public Liability Insurance of not less than \$20,000,000.
- 15. WARRANTIES: MAINMARK** provides only those warranties set out in the Proposal under the heading "WARRANTIES".
- 16. DISPUTES AND GOVERNING JURISDICTION:** In the event of a dispute between the parties in connection with the Contract ("Dispute") and that dispute has not been resolved by negotiation within seven (7) days of it first arising then either party shall give written notice of the Dispute to the other party providing particulars of the dispute and how that party sees the dispute being resolved. Within seven (7) days of receipt of that notice the other party shall respond to the particulars and how that party sees the dispute being resolved. If the Dispute cannot thereupon be resolved within a further fourteen (14) days from the date of the second notice by good faith negotiations before an agreed mediator or failing agreement with the assistance of representatives appointed by either party then either party may refer the Dispute to be determined by litigation before the courts or other tribunals having the required jurisdiction in the State or Territory in which the Property is located. The law of that State or Territory shall apply to the Contract.
- 17 LATENT CONDITIONS:** This Contract is subject to, and has been based on, information that has been provided to MAINMARK by the Client. MAINMARK shall not be liable for any loss, cost, expense or damage suffered or incurred by the Client or any other person to the extent that physical conditions on or under the site at which the Services are to be provided at the Property or its immediate surroundings differ materially from the physical conditions which could reasonably have been anticipated by MAINMARK at the date of the Contract if MAINMARK had:
- (a) examined all information made available in writing by the Client to MAINMARK prior to the commencement of the Services; and
  - (b) inspected by non-invasive means, the site at which the Services are to be provided and its surroundings.

## 18. DEFAULT AND TERMINATION

- 18.1 The Client will be in default of the Contract if:
- (a) The Client commits a breach of any of its obligations (including as to payment) owed to MAINMARK under the Contract; or
  - (b) The Client, if a company, has an administrator, liquidator, receiver (or receiver and manager) appointed, or if a natural person is made bankrupt, and in either case cannot pay that party's debts as and when they fall due, or in the case of a Client that carries on business ceases to carry on business.
- 18.2 If any of the events described in Term 18.1 occurs, MAINMARK may do any one or other of, or in combination:
- (a) immediately either suspend the Services or terminate the Contract;
  - (b) require all amounts owing to MAINMARK (whether or not due for payment) to be paid immediately;
  - (c) enter onto the Property and retake possession of any of MAINMARK's plant, equipment, material or vehicles; or
  - (d) exercise all rights that MAINMARK has under the Contract or that are available to it at law.
- 18.3 The Client indemnifies MAINMARK against any cost, claim, damage, expense or liability suffered or incurred by MAINMARK in exercising its rights under this Term 18 or otherwise acting to recover any property from the Client or monies payable by the Client.
- 18.4 MAINMARK will not be liable to the Client or any other person for any loss suffered or liability incurred (including indirect and consequential losses) arising from suspension or termination of the Contract, or MAINMARK's retaking possession of any of its property.
- 18.5 The Client shall be entitled to terminate the Contract:
- (a) immediately where MAINMARK has an administrator, liquidator, receiver (or receiver and manager) appointed, cannot pay its debts as and when they fall due or ceases to carry on its business; or
  - (b) upon the provision of not less than fourteen (14) days' written notice to MAINMARK in the event that MAINMARK is in default of a material obligation owed to the Client under the Contract and MAINMARK has not taken reasonable steps to rectify such default within 30 days of the default.

## 19. LIABILITY

- 19.1 If MAINMARK becomes liable to the Client in connection with the Services under the Contract (whether in contract, tort or otherwise), MAINMARK's liability shall be limited to the reasonably foreseeable direct damages, losses or expenses and for the avoidance of doubt will not be liable for any indirect, consequential or special loss, loss of profit, loss of opportunity or delay costs howsoever arising.
- 19.2 Notwithstanding Term 19.1, the maximum aggregate liability of MAINMARK for any claims made by the Client (whether in contract, tort or otherwise) shall not exceed 10% of the Price except where a claim is successfully made against MAINMARK for which MAINMARK has effected a policy of insurance as referred to in Term 14 and MAINMARK is indemnified under that policy in which event the maximum aggregate liability of MAINMARK shall be limited to the amount paid by the insurer in respect of a claim after deduction of any excess payable by MAINMARK.

- 19.3 Notwithstanding Terms 19.1 and 19.2, if MAINMARK is found liable to the Client (whether in contract, tort or otherwise), and the Client and/or a third party has contributed to the loss or damage, MAINMARK shall only be liable to the proportional extent of its own contribution.
- 19.4 For the avoidance of doubt MAINMARK will not be liable for any losses or expenses suffered or incurred by the Client arising out of or in connection with:
- (a) a delay or failure by the Client to comply with any of its responsibilities as set out in the Contract;
  - (b) any damage to services (including underground services and connections), building structure, adjacent elements, wall/floor finishes, landscaping or the like; and
  - (c) ingress of MAINMARK material into drainage systems or fittings, conduits, appliances, services or unrelated voids/rooms.

**20. INTELLECTUAL PROPERTY:** The Contract does not grant the Client any intellectual property rights, title or interest (including copyright) in relation to the Services.

**21. FORCE MAJEURE: MAINMARK** will not be liable for any failure or delay to perform its obligations under the Contract caused by any event or circumstances beyond its reasonable control ("**force majeure**"). The performance of MAINMARK's obligations under the Contract will be suspended for the period of any delay due to force majeure. Any costs incurred by MAINMARK due to force majeure will be payable by the Client. Nothing in this Term shall excuse the Client from any obligation to make a payment when due under the Contract.

**22. CONFIDENTIALITY:** The Client will at all times treat as confidential all non-public information and material received from MAINMARK (including the existence, terms and pricing included in the Contract) and will not publish, release or disclose the same.

**23. PRIVACY OF INFORMATION:** The Client authorises MAINMARK to collect, obtain, retain and use information about the Client from any person for the purpose of assessing the Client's creditworthiness and to disclose information about the Client to any person to enable MAINMARK to exercise or enforce any of its rights, remedies and powers under the Contract.

## 24. WORK, HEALTH & SAFETY

24.1 For the purposes of this Term:

- (a) "**Principal Contractor**" means where the Property is in a **Uniform WH&S State**, 'principal contractor' within the meaning of the WH&S Regulation; **Victoria**, 'principal contractor' within the meaning of the
  - (b) Occupational Health and Safety Regulation 2017 (Vic); and **Western Australia**, 'main contractor' within the meaning of the Occupational Health and Safety Regulations 1996 (WA):
- and for all the purposes of this Term 24 "**Property**" shall also mean "**Site**" in relation to any of the statutes and regulations referred to.
- (c) "**Uniform WH&S State**" means the States of New South Wales, Queensland, Tasmania and South Australia; the Northern Territory and the Australian Capital Territory;
  - (d) "**WH&S Legislation**" means the legislation of a State or Territory relating to work, health and safety in that State or Territory.

- (e) **"WH&S Regulation"** means the regulations of a State or Territory relating to work, health and safety in that State or Territory.
- 24.2 Where the Property is located in a Uniform WH&S State, in so far as the provision of the Services by MAINMARK under the Contract is a 'construction project' as defined under clause 292 of the WH&S Regulation, from the date of commencement of the provision of the Services:
  - (a) MAINMARK is engaged as Principal Contractor as defined under clause 293 of the WH&S Regulation in respect of the Services and the Property;
  - (b) the Client authorises MAINMARK to have management and control of the Property and to discharge the duties of a "Principal Contractor" under the WH&S Legislation and WH&S Regulation; and
  - (c) in respect of the provision of the Services and other activities on the Property, MAINMARK shall discharge the obligations of a "Principal Contractor" under the WH&S Legislation and WH&S Regulation.
- 24.3 Where the Property is located in Victoria, the parties acknowledge that, for the purposes of regulation 333 of the WH&S Regulation of that State, the Client:
  - (a) appoints MAINMARK as the Principal Contractor for the work under the Contract and the Property; and
  - (b) authorises MAINMARK to manage and control the site to the extent necessary to discharge the duties imposed on a "Principal Contractor" under the WH&S Legislation and Part 5.1 of the WH&S Regulation.
- 24.4 Where the Property is located in Western Australia, in accordance with the WH&S Regulation, the Client appoints MAINMARK as the Principal Contractor for the work under the Contract and the Property.
- 25. **GENERAL**
  - 25.1 **Costs:** The Client shall pay all costs and expenses (including legal fees on a solicitor and own client basis) incurred by MAINMARK in exercising or enforcing any of MAINMARK's rights, remedies and powers under the Contract.
  - 25.2 **Assignment:** The Client may not assign, subcontract or otherwise transfer any of its rights, powers or obligations under the Contract without MAINMARK's prior written consent. Mainmark may assign, subcontract or otherwise transfer any rights, powers or obligations under the Contract and shall give written notice thereof to the Client.
  - 25.3 **Severance:** The illegality, invalidity or unenforceability of a provision of the Contract shall not affect the legality, validity or enforceability of any other provision of the Contract.
  - 25.4 **Waiver:** No failure or delay by MAINMARK in exercising any power or right conferred on MAINMARK by the Contract shall operate as a waiver of such power or right.
  - 25.5 **No set-off:** In no event shall the Price or any other amount payable for the Services under the Contract (including any additional costs payable to MAINMARK) be subject to any set-off, deduction or counterclaim of any kind by the Client.