

To the fullest extent legally permissible all dealings between each customer (including all related and/or associated companies and/or other entities, all successors and/or assigns and in the customer's own capacity and as trustee of each and every trust of which the customer is trustee) [jointly "the Customer"] and Terrain Consulting Group Pty Ltd ACN 093 833 348 (and/or any successors and/or assigns whether trading as "Terrain Consulting Group" and/or otherwise) and/or Barker Monahan Pty Ltd ACN 626 872 731 (and/or any successors and/or assigns whether trading as "Barker Monahan" and/or otherwise), individually or together [the "Supplier"] relating to any and all services [the "services"] are subject to the following terms and conditions ["these Terms"] unless otherwise expressly agreed in writing:

**1. Payment:** Payment shall be made by cheque, bank cheque, EFTPOS, electronic funds transfer or credit card (Visa or Mastercard only) without deduction and within the credit period stipulated in each invoice or statement. If no credit period is stipulated, payment shall be made within 14 days from the date of invoice.

**2. Interest:** Interest shall be charged on overdue accounts at the current *Penalty Interest Rates Act 1983* (Vic.) interest rate plus 2%.

**3. Consumer Guarantees & ACL:** The Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ["ACL"] provides consumers with certain consumer guarantees and rights in relation to certain transactions concerning goods and/or services (see [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)). Any rights the Customer may have under the ACL shall apply notwithstanding any inconsistent provisions in these Terms which shall be read down to the extent necessary to comply with the ACL and which shall otherwise apply to the fullest extent legally permissible.

**4. Limitation of Liability:** To the extent permitted by the ACL: **a)** the Customer agrees to limit any claim to the re-supply of services (or cost thereof); **b)** the Supplier shall not be liable for any Consequential Loss and/or any special and/or punitive damages through any fault and/or negligence of the Supplier or otherwise; and **c)** for the purposes of clause 4b) "Consequential Loss" includes but is not limited to: loss of profits, loss of revenue, loss of opportunity, loss of goodwill and/or loss of contract.

**5. Cancellations:** The Customer agrees: **a)** not to cancel any order or work without the Supplier's prior approval; **b)** in the event of any cancellation, to pay the Supplier for all services performed up to the time of cancellation; and **c)** to indemnify the Supplier against any and all loss suffered as a result of any cancellation.

**6. Proposals and Acceptance:** The Customer agrees that: **a)** proposals must be in writing; **b)** the Supplier shall not be bound by any proposal if the proposal is not accepted within 30 days of the date of the proposal; and **c)** the Supplier may prior to acceptance amend any proposal and notify the Customer accordingly without ramification.

**7. Supply and Delivery of Services:** **a)** The Supplier may supply on timing as it sees fit and/or withhold or cancel supply where: (i) the Supplier has insufficient resources to fulfil orders; (ii) external factors hinder supply; (iii) the Customer is in breach of these Terms; and/or (iv) the Supplier has any occupational health and/or safety concerns. **b)** The Customer agrees that: (i) the Supplier may elect to arrange delivery of services at its discretion and without any liability and at the cost and responsibility of the Customer in all things; and (ii) the Supplier shall not be liable for delay, failure or inability to deliver any services. **c)** The Customer agrees: (i) to pay for so much of any forward order as the Supplier invoices from time to time; and (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

**8. Price:** **a)** In the absence of a binding proposal all services are made at the price nominated by the Supplier at the time of delivery. **b)** All government imposts, levies and duties (including any GST or equivalent) shall be to the Customer's account. **c)** Prices exclude all government imposts, levies and duties (including any GST or equivalent).

**9. Variations:** To be binding any variation or cancellation of these Terms or any proposal or order must be approved by the Supplier in writing.

**10. Exclusions:** To the extent permitted by the ACL: **a)** save for specific services which the Supplier agrees to supply, the Customer shall rely on its own knowledge and expertise in all matters and any advice and/or assistance given by or for the Supplier shall be at the Customer's risk and shall not be or be deemed to be given as expert

or adviser nor to have been relied on by the Customer or anyone claiming through the Customer; and **b)** save as provided for in any proposal or as agreed between the parties, the Supplier shall not be responsible nor liable for paying and/or obtaining any necessary statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences. Where the Supplier chooses to pay for any of these things the Supplier may on-charge the cost.

**11. Default:** **a)** On default or breach of any part of these Terms by the Customer the full balance of all unpaid monies shall be deemed by this clause to be immediately due and payable (save to the extent that the Supplier expressly directs otherwise in writing) and the Supplier may *inter alia* terminate any contract, retain all monies paid, cease further provision of services and/or recover all lost profits without prejudice to any other rights and without being liable in any way to any party. **b)** The Customer agrees to indemnify the Supplier for all fees and expenses payable to lawyers, mercantile agents and/or other parties acting on behalf of the Supplier in respect of anything instituted or being considered against the Customer whether for debt, or otherwise (including all legal costs on an indemnity basis). **c)** The Supplier may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as the Supplier in its discretion deems appropriate.

**12. Indemnity:** The Customer fully indemnifies the Supplier against any claim and/or loss arising from or related in any way to any dealing between the Supplier and the Customer and/or arising under these Terms.

**13. Intellectual Property:** The Customer agrees that all intellectual property in any documents, surveys, plans, drawings, reports, etc created as part of the provision of the services shall be and remain the exclusive property of the Supplier and shall not be amended by the Customer or any third party and/or reproduced without the Supplier's written consent.

**14. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon the Supplier shall apply.

**15. Jurisdiction:** The Customer agrees that these Terms and any claim or dispute between the Supplier and the Customer shall be governed by the law applicable in the State nominated by the Supplier and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by the Supplier in the capital city of that State. If no State is nominated then Victoria shall be deemed to be the nominated State.

**16. Waiver:** An election by the Supplier not to exercise any rights on any breach of these Terms shall not constitute a waiver of any rights relating to any other breach.

**17. Variations:** The Customer: **a)** acknowledges that the Supplier may vary or replace these Terms affecting all future dealings between the Customer and the Supplier; **b)** shall be deemed to have notice of any variation to or replacement of these Terms immediately upon the Supplier notifying the Customer at the Customer's last known address; and **c)** shall be deemed to have accepted these Terms as varied or replaced immediately upon placing any further order with the Supplier.

**18. Force Majeure:** The Supplier shall not be in default or in breach of any contract with the Customer as a result of *Force Majeure* including any pandemic, epidemic, strike, lock-out or event beyond the Supplier's control.

**19. Insolvency:** The Customer shall be in default of these Terms if the Customer commits an act of insolvency, appoints an insolvency practitioner or has one appointed and/or calls a formal meeting of creditors.

**20. Severability:** Any part of these Terms shall be capable of severance without affecting any other part of these Terms.