



Tough Terrain Earthworks Pty Ltd T/A APA Plant Hire

Contract Conditions

1. Definitions

In these conditions:

"Conditions" means the terms of these Conditions of Sale;

"Customer" means a person, firm or corporation seeking to acquire Goods or Services from the Supplier and where applicable includes the Applicant in the Commercial Credit Application and, if the Customer consists of more than one person, each of them jointly and severally; **"Goods"**

means all goods and or materials supplied by the Supplier to the Customer; **"GST"** means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended;

"Other Property" means all present and after-acquired property of the Customer (except the Goods) whether acquired alone or jointly as a tenant in common or as a joint tenant;

"Normal Hours" means Monday to Friday 6:00am – 6:00pm;

"PPSA" means the Personal Property Securities Act 2009 (Cth) as amended; **"Security Agreement"** and **"Security Interest"** have the meaning ascribed to them in the PPSA;

"Services" means any and all services supplied by the Supplier to the Customer; and

"Supplier" means Tough Terrain Earthworks Pty Ltd T/A APA Plant Hire (ABN 62 683 687 505) of, 5 Ferrier Road, Narangba, QLD, 4504

2. Application of the Conditions

- 2.1 Subject to clause 2.4, or unless otherwise agreed in writing, these Conditions will apply exclusively to every contract for the supply of Services or for sale of Goods to the Customer and cannot be varied or replaced by any other conditions without the prior written consent of the Supplier.
- 2.2 If rates are stated on a volumetric basis, the price quoted will be based on a loose uncompacted volume as measured in the truck body at the place of delivery.
- 2.3 The Supplier will not be deemed to have accepted an order or an offer by the Customer unless it has communicated acceptance to the Customer in writing or has delivered the Goods or supplied the Services stated in the order.
- 2.4 The Supplier may vary these Conditions provided it first gives 30 days written notice to the Customer. Any order placed, or Goods or Services supplied at the request of the Customer, after such 30-day period, will be deemed to be the Customer's acceptance of the varied Conditions.
- 2.5 The Supplier may terminate this agreement on 30-days written notice. Any termination is without prejudice to the rights of the Supplier accrued prior to such termination including the right to be paid or to recover any Goods supplied.



- 2.6 The Customer and Supplier agree to keep confidential the terms of these Conditions, including the price of the Goods and or Services, except as required by law.

3. Quotations

- 3.1 Any written quotation provided by the Supplier to the Customer concerning the supply of Goods and or Services is valid for 30-days, unless otherwise stated in the quotation, and is an invitation only to the Customer to place an order based upon that quotation.
- 3.2 Rates quoted in a quotation are based on quantities to be supplied and specifications stated at the time of request and any variation of quantities, specifications or delivery programs will involve a rate adjustment as determined by the Supplier.
- 3.3 All quoted prices include an allowance for 10 minutes of unloading time at the site. Any additional time required for unloading will incur an additional charge.
- 3.4 A quotation may be accepted by the Customer verbally or in writing (including without limitation by facsimile or email) or in any other method agreed by the Supplier. If the Customer does not formally confirm its acceptance of a quotation, it will be deemed to have done so upon acceptance of the relevant Goods and/or Services.
- 3.5 Each quotation issued by the Supplier and which is accepted by a Customer will constitute an order, being a separate contract between the parties that will be subject to these terms and conditions as well as any additional terms and conditions specified in the quotation.
- 3.6 Each Order for the supply of Goods and/or Services by the Supplier: (a) commences on the date that the quotation is accepted by the Customer in accordance with clause 3.4 and remains in force until full payment of the Supplier's final invoice (unless terminated earlier in accordance with the terms applying to that order); and (b) is governed by and comprises the terms of this contract and any terms set out in the relevant quotation, with the terms set out in that quotation prevailing to the extent of any inconsistency.
- 3.7 The terms of this contract and any order override any inconsistent conditions in any other document or communication provided by or on behalf of the Customer.

4. Payment

- 4.1 The Customer must comply with the payment terms specified in the quotation and pay all amounts owing on or before the time they are due, without set off, deduction or withholding. No account will be deemed to be paid unless paid by cash or bank cheque or electronic funds transfer or until the Supplier has received full payment in cleared funds.
- 4.2 Payment for Goods and or Services must be made on or before the 14th day of invoice following supply of the Goods and/or Services.



- 4.3 In the event that there are insufficient funds to meet any cheque drawn by the Customer in favour of the Supplier, an administration fee will be charged on each and every representation and or dishonour.
- 4.4 The Supplier may withdraw any credit terms or require the provision of security at any time in its absolute discretion and without notice to the Customer and may apply any payment by the Customer in any manner as the Supplier sees fit.

5. Payment Default

- 5.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any accrued rights or 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 plus 2 per cent for the period from the due date until the date of payment in full; (b) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due; (c) cease or suspend for such period as the Supplier thinks fit, supply of any further Goods, Services or credit to the Customer; and (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier.
- 5.2 Clause 5.1 may also be relied upon, at the option of the Supplier: (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors; or (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 5.3 In the event of a dispute, the Customer will not be entitled to withhold payment of any undisputed amount due to the Supplier.

6. Passing of Property in Goods

- 6.1 The Customer agrees: (a) that these Conditions constitute a Security Agreement for the purposes of the PPSA; (b) that these Conditions create a Security Interest in all Goods (and the proceeds of the Goods) in favour of the Supplier to secure the purchase price for the Goods; (c) that the following sections of the PPSA do not apply: 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, and, to the extent section 115(7) applies, each section of Part 4.3



of the PPSA is excluded unless the Supplier elects in writing to retain Part 4.3 (which the Supplier may elect to do either in whole or in part); and (d) to waive its right to receive notice of a verification statement in relation to registration of a Security Interest.

- 6.2 The Customer: (a) further agrees that these Conditions also create a Security Interest in all of the Customer's Other Property, although such Security Interest is not intended to prevent the Customer from Contract Conditions Tough Terrain Earthworks Pty Ltd T/A APA Plant Hire ABN 62 683 687 505 | 5 Ferrier Road, Narangba, QLD, 4504 transferring such Other Property in the ordinary course of the Customer's business; and (b) separately charges all land owned now and in the future by the Customer whether owned alone or jointly as a tenant in common or as a joint tenant, in favour of the Supplier to secure payment and performance of all the Customer's obligations under these Conditions.
- 6.3 The Customer agrees: (a) title and property in all Goods remain vested in the Supplier and do not pass to the Customer; (b) the Customer must hold the Goods as fiduciary bailee and agent for the Supplier; (c) the Customer must whenever possible keep the Goods separate from its own goods; (d) the Customer is required to hold the proceeds of any sale of the Goods on trust for the Supplier in a separate account; (e) the Customer must deliver up all Goods to the Supplier immediately upon service of a written demand; and (f) the Supplier may without notice, enter any premises or land where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises or land and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action, until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer.
- 6.4 The Customer may resell the Goods in the ordinary course of its business (but may not otherwise sell or encumber the goods) and if it does so shall receive the proceeds of resale as trustee of the Supplier, to be held on trust for the Supplier. The Supplier shall be entitled to trace the proceeds of resale.
- 6.5 To assure performance of its obligations under these Conditions, the Customer hereby grants the Supplier an irrevocable power of attorney to do anything the Supplier considers should be done by the Customer pursuant to these Conditions. The Supplier may recover from the Customer the cost of doing anything under this clause 6, including registration fees.

7. GST and Duties

- 7.1 Prices for the supply of Goods and or Services exclude sales tax, consumption or goods and services tax, and any other taxes, duties or imposts imposed on or in relation to the Goods and or Services.



- 7.2 If prices for Goods and or Services provided by the Supplier do not expressly indicate that the prices include GST then the Customer will pay the Supplier the price for the Goods and or Services plus GST.

8. Delivery of the Goods

- 8.1 Any period or date for delivery of Goods and or Services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier may deliver the Customer's orders in part or in whole.
- 8.2 All costs of freight, insurance and other charges associated with the delivery of the Goods to the agreed delivery address shall be borne by the Customer.
- 8.3 If the Customer is unable or fails to accept delivery of the Goods, the Customer will be liable for all costs incurred by the Supplier due to storage, detention, double cartage, travel expenses or similar causes.
- 8.4 In the event of deliveries to the Customer being less than the Supplier's minimum load requirements, an additional cartage charge will be payable by the Customer in accordance with the Supplier's ruling rates.
- 8.5 Quotations are based upon delivery being made by the shortest access route available, and in the event of roads being closed and preventing delivery by the shortest access route, the Supplier shall have the right to charge for any additional costs incurred by it in making delivery including additional toll fees.
- 8.6 Delivery will only be made during Normal Hours and in the event of delivery being requested outside Normal Hours, where this can be accommodated an additional cartage charge will be payable in accordance with the Supplier's rates from time to time.
- 8.7 The Supplier will not be liable in any way whatsoever for delay in delivery or non-delivery (or any costs associated therewith) which is attributable to transport delays, plant or equipment breakdowns, unavailability or shortage of materials, industrial stoppages or any other cause whatsoever which is beyond the direct control of the Supplier.
- 8.8 Delivery will only be made to the kerbside. If at the request of the Customer the delivery vehicle enters the job area the Supplier shall not be liable for, and is hereby indemnified by the Customer in respect of any claims made by or through the Customer of any third party which arises out of effecting such entry of by the presence of the Supplier's vehicle in the job area.
- 8.9 All vehicles involved in the provision of Goods and/or Services to the Customer will be granted appropriate site access at all times and the Customer agrees that wait times for



a delivery will not exceed 10 minutes from the time of arrival at the specified site after which the Supplier's standard wait time charges will apply.

9. Testing

- 9.1 If the Customer requires the Goods and or services to be subject to special testing or inspection, the Customer agrees to pay all costs of and associated with such testing or inspection. The Customer agrees that all testing and inspection must be carried out in accordance with the relevant Main Road Technical Standards or Qld Department of Transport & Main Roads Test Procedure by a testing laboratory approved by the National Association of Testing Authorities.
- 9.2 Any inspector or other person attending the Supplier's premises on behalf of the Customer must be authorised in writing by the Customer and receive prior consent from the Supplier. The Customer will be responsible for all of that person's acts or omissions while at the Supplier's premises.
- 9.3 The Customer must provide the Supplier with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to the Goods and/or Services within 5 days of receipt.

10. Risk and Insurance

- 10.1 All risk in any Goods supplied and all insurance responsibility for theft, damage or otherwise in respect of any Goods supplied will pass to the Customer immediately upon delivery of the Goods to the Customer.
- 10.2 The Customer must maintain the following insurances with a reputable insurer authorised under the Insurance Act 1973 (Cth) at all relevant times: (a) public liability insurance for an amount not less than \$20 million in respect of any claim or any higher amount the Supplier reasonably requires; and (b) relevant insurance to the works contemplated in the quotation ("Insurance"), and warrants that the Insurance is in place as at the date of this contract.
- 10.3 The Customer must produce evidence of the Insurance on demand, to the satisfaction of the Supplier.
- 10.4 Upon written request by the Supplier, each Insurance policy required under clause 10.2 must note the interest of the Supplier.



11. Force Majeure

Without limiting clause 12, the Supplier will not be liable for non-performance or delays in performance occasioned by any causes beyond the Supplier's reasonable control including but not limited to acts of God, war, riot, fire, drought, flood, inclement weather, explosion, accident, sabotage, failure to obtain power supply, unavailability of any essential equipment or materials, labour, containers, transport delays, plant or equipment breakdowns, strikes, lockouts, industrial disputes and Governmental actions. The Customer will not be entitled to recover from the Supplier damages of any kind (whether general, special or otherwise) for non-performance or delays in performance by the Supplier arising out of any matter contemplated by this clause.

12. Liability

- 12.1 Except as specifically set out herein, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods and/or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 12.2 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused arising from the supply of the Goods and/or Services, including but not limited to loss of turnover, profits, business or goodwill.
- 12.3 The Supplier will not be liable for any loss, damage or claim suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of Goods and or Services Contract Conditions Tough Terrain Earthworks Pty Ltd T/A APA Plant Hire (ABN 62 683 687 505) | 5 Ferrier Road, Narangba, QLD, 4504
- 12.4 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods and/or Services which cannot be excluded, restricted or modified. If any of these Conditions is inconsistent with State or Federal legislation, such Conditions must be read down only to the extent necessary to comply with such legislation and will otherwise apply to the fullest extent legally possible.
- 12.5 If the Customer is a "consumer" within the meaning of Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any Goods supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a breach of a condition, warranty or guarantee (whether express or implied) is limited to any one of the following as determined by the Supplier: (a) the replacement of the Goods or the supply of equivalent Goods; or in the case of Services, supply the Services again or pay the costs of having the Services supplied again (b) the payment of the cost or replacement of the Goods or of acquiring equivalent Goods.



13. Indemnity

- 13.1 The Customer indemnifies the Supplier and its successors and permitted assignees against any claim or proceeding that is made, threatened or commenced, and any cost, liability, loss (including without limitation consequential loss), damage or expense (including without limitation legal and other professional costs on a full indemnity basis) that the Supplier incurs or suffers, as a direct or indirect result of: (a) a breach of an Agreement by the Customer; (b) personal injury, death or loss of or damage to real or personal property caused or contributed to by the Customer or its employees and or contractors; (c) any infringement of intellectual property or other rights of any person arising in connection with any plans, drawings or other material that the Customer provides (or authorises a third party to provide) to the Supplier for the purpose of providing the Goods and/or Services; (d) any failure of any facilities and equipment at the site or sites specified in the quotation to meet all applicable laws, regulations and standards, or otherwise be suitable for deliveries of the relevant Goods and/or provision of the relevant Services; or (e) any damage, leakage, spillage, breakage or contamination during or caused by delivery of the Goods and/or provision of the Services.
- 13.2 Without limiting what is covered by this indemnity, the indemnity extends to the Supplier's liability to third parties arising out of the Goods and/or Services including liability to Governmental or regulatory authorities and consumers for unsafe or defective goods or services. The indemnity applies whether or not the Supplier or any of its appointed representatives has been negligent or is at fault and does not limit any further compensation rights of the Supplier or any of its Representatives.
- 13.3 This clause 13 continues despite the termination of this Agreement.

14. Cancellation

The Customer may only cancel an order (or part thereof) by written notice to the Supplier received by the Supplier prior to the vehicle involved in the provision of Goods and/or Services to the Customer being loaded, in which event the Customer will be liable for and must pay to the Supplier on demand in cleared funds all costs and expenses incurred by or on account of the Supplier prior to the time of cancellation that relate directly or indirectly to the cancelled order.

15. Claims and disputed quantities

- 15.1 All Goods are sold on a non-returnable, non-refundable basis and, subject to clause 15.3, may only be returned if the Goods are damaged by the Supplier upon delivery or are incorrectly supplied by the Supplier.
- 15.2 Any claim by the Customer that the Goods are damaged or incorrectly supplied must be made in writing to the Supplier within 5 business days of receipt of the Goods by the Customer and the Customer must provide a reasonable opportunity for the Supplier to inspect the Goods. The Supplier's only liability (if any) is limited to the resupply of the Goods.



- 15.3 The Supplier may, in its sole and absolute discretion, agree to accept a return of some or all of the Goods but all such Goods returned will be subject to a minimum 25% handling fee.
- 15.4 All Goods and/or Services provided under a Customer's order will be deemed satisfactory unless the Customer advises the Supplier otherwise in writing within 5 days of the later of: (a) the date of delivery of the Goods; or (b) the date of completion of the Services.
- 15.5 The Customer must include full particulars of its reasons for claiming the Goods and/or Services are unsatisfactory in its notice to the Supplier.
- 15.6 Where the Customer alleges any deficiency in quantity to that specified in the delivery docket, the Customer must notify the Supplier's contact of any such claim within 24 hours of delivery, and provide written confirmation with full particulars in support of its claim within 5 days of delivery.

16. This Agreement

This Agreement contains everything the parties have agreed on in relation to the matters it deals with. Neither party can rely on an earlier document, or anything said or done by the other party, or by employee or representative of that party, before this Agreement was executed, save as permitted by law.

17. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing and signed by the party granting it. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

18. Subcontracting

The Supplier reserves the right to sub-contract the whole or part of the work under an Order provided that any act of sub-contract will not relieve the Supplier of its obligations under this Agreement or the order.

19. Assignment

Neither party may assign its rights or obligations under this Agreement or an order to any person without the prior written consent of the other party.



20. Termination

No party is entitled to terminate this Agreement or cancel an order except as expressly permitted in this Agreement. If this Agreement is terminated or an order is cancelled for any reason, each party retains its rights under this Agreement or that order at law, in respect of any breach of this Agreement or that order, by the other party.

22. Governing law and jurisdiction

This Agreement and any order is governed by the law of the State in which the Supplier's registered office is situated as at the date of this Agreement. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction of those courts on any basis.

23. Severability

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause is to be treated as removed from this Agreement or an order but the rest of this Agreement or that order is not affected.