

**CRACKSHOT BORING PTY LTD TRADING AS
TOTAL UNDERGROUND SOLUTIONS
TRADING TERMS AND CONDITIONS**

The Supplier: Crackshot Boring Pty Ltd (ACN 072 665 868) trading as Total Underground Solutions of 2/12 Gasoline Way, Craigieburn VIC 3064

1. DEFINITIONS

- 1.1. Any reference to "the Customer" includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.
- 1.2. The Order shall be defined as any request for the provision of Services by the Customer to the Supplier which has been accepted by the Supplier.
- 1.3. The Services are the installation of underground infrastructure together with underground drilling, boring, excavation, service locating and associated services to be carried out at the Premises, including any advice or recommendations given.
- 1.4. The Goods are the parts, components and materials provided by the Supplier and used up by the Supplier in performing the Services.
- 1.5. The Premises are the land or land and buildings where the Services are to be carried out, or which are the subject of the Services to be performed.
- 1.6. Reference to loss and damage includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.7. Any reference to "the SOP Act" refers to the Building and Construction Industry Security of Payment Act 2002 (Vic).
- 1.8. Major failure is as defined under the Competition and Consumer Act 2010 (Cth).
- 1.9. GST refers to goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

2. GENERAL

- 2.1. These terms and conditions together with the Supplier's quotation, credit application form and the Customer's work or purchase order document (if any) constitutes the agreement between the Supplier and the Customer ("the agreement").
- 2.2. Any Order is deemed to incorporate these terms and conditions; which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.5. Where more than one Customer completes this agreement each shall be liable jointly and severally.
- 2.6. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these terms and conditions.
- 2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.
- 2.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.9. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

3. QUOTATIONS AND PLACEMENT OF ORDERS

- 3.1. Any quotation given by the Supplier will expire after thirty (30) days.
- 3.2. A written quotation from the Supplier will include a scope of works detailing the specific Services to be performed by the Supplier.
- 3.3. The Supplier does not represent that it will provide any Services unless they are included in the Order and/or quotation.
- 3.4. A request for Services may be placed by the Customer with the Supplier either verbally or in writing however the Supplier may require the Customer to provide a work or purchase order document prior to providing any Services.
- 3.5. As a condition of acceptance the Supplier may require the payment of a deposit in respect of the Price and/or payment of the Price by interim or progress payments made at specified intervals or stages in the completion of the Services. If a deposit is required the Supplier may not be deemed to have accepted the Customer's request for Services unless or until such deposit has been paid.
- 3.6. The Supplier may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the quotation given or in the Customer's Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Services include, but is not limited to additions alterations or amendments to the quote or scope of works ("a variation").
- 3.7. All prices quoted are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE

- 4.1. GST will be charged on the Services provided by the Supplier that attract GST at the applicable rate.
- 4.2. The Supplier reserves the right to change the Price in the event of a variation. Notice will be provided in writing by the Supplier within a reasonable time.
- 4.3. At the Supplier's sole discretion the Price shall be either:
 - 4.3.1. The Supplier's quoted Price for the Order (subject to clause 5.2); or
 - 4.3.2. As detailed on invoices provided by the Supplier to the Customer in respect of Services supplied.

5. PROVISION OF THE SERVICES

- 5.1. The Supplier reserves its right to:
 - 5.1.1. Decline requests for any Services requested by the Customer.
 - 5.1.2. Cancel or postpone appointments at their discretion.

- 5.2. Unless specified by the Supplier to the contrary in the Order or quotation, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of the agreement.
- 5.3. Subject to otherwise complying with its obligations under the agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 5.4. The Customer grants full access to the Supplier and its servants and agents to the Premises and shall ensure a supply of water and/or electricity (at no cost) to enable the Supplier to carry out the Services.
- 5.5. The Customer warrants that it is either the owner of the Premises or is acting with the express authority of the Owner and the Customer indemnifies and will continue to indemnify the Supplier in respect of this warranty; including any claim for loss and damage by the owner of the Premises against the Supplier.
- 5.6. The Customer is responsible for obtaining all necessary permits and to mark out the site at the Premises for the provision of the Services.

6. PAYMENT AND CREDIT POLICY

- 6.1. The issuing of an invoice for an interim or progress payment by the Supplier for the Services that the Supplier is entitled to make pursuant to the agreement constitutes a payment claim pursuant to the SOP Act.
- 6.2. Non-Account Customers must make full payment to the Supplier on completion of the Services, unless otherwise specified or agreed between the parties in writing.
- 6.3. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed credit application form.
- 6.4. On the acceptance by the Supplier of a completed credit application form, Account Customers must make full payment to the Supplier within thirty (30) days from the date of issue of the Supplier's invoice for the Services, unless otherwise specified in the credit application form or agreed between the parties in writing.
- 6.5. Any credit, or credit limit granted by the Supplier may be revised by the Supplier at any time and at its discretion.
- 6.6. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these terms and conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 6.7. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.
- 6.8. Account Customer's Policy
- 6.8.1. The Customer agrees:
 - 6.8.1.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
 - 6.8.1.2. That the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
 - 6.8.1.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

7. DEFAULT

- 7.1. In this clause the "default date" is:
 - 7.1.1. The day after the date of completion of the Services to the Non-Account Customer; or
 - 7.1.2. The day after the date by which payment of the Supplier's invoice(s) was due to be made by the Account Customer to the Supplier.
- 7.2. In this clause the "outstanding balance" is:
 - 7.2.1. The Price of the Order, less any payments made by the Non-Account Customer prior to the default date; or
 - 7.2.2. The sum of the Supplier's invoice(s) to the Account Customer less any payments made by the Account Customer prior to the default date.
- 7.3. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier's bank.
- 7.4. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:
 - 7.4.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
 - 7.4.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
 - 7.4.3. Any debt collection or recovery costs incurred by the Supplier; and if the Supplier's debt collection agency ("the agency") charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Supplier to the agency, at the agency's prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:
$$\text{Commission} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission\% charged by agency}}$$
including GST

(NB. In the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au.)

- 7.4.4. Any charges reasonably made or claimed by the Supplier's or the agency's lawyer for legal costs on the indemnity basis.

8. RISK AND LIABILITY

- 8.1. The Customer will ensure when placing Orders that there is sufficient information and specifications to enable the Supplier to execute the Order, including, but not limited to advising or providing plans detailing any concealed easements, pipes or wiring and the like to the Supplier.
- 8.2. The Supplier takes no responsibility if the specifications provided by the Customer are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
- 8.3. In this clause a "failed bore attempt" is when the Supplier is unable to complete the Services due to any obstructions including but not limited to, unmarked easements and/or assets, pipes or wiring and the like. Due to the nature of the Services, and in the event of a failed bore attempt, the Customer agrees to be liable for any Services at the Suppliers prevailing rate notwithstanding the failed bore attempt.
- 8.4. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of any delay due to inclement weather, machinery breakdown, failure to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.

- 8.5. The Customer warrants that the Premises is in a safe condition for the Supplier's servants and agents to perform the Services, and the Customer indemnifies and agrees to keep the Supplier indemnified against any and all claims for personal injury and loss and damage arising from or in connection with failing to keep the Premises safe to work in, including but not limited to injury caused by any feature or condition of the Premises, whether or not any such feature or condition is reasonably obvious and whether or not the feature or condition is known to the Customer.
- 8.6. The Customer is responsible for ensuring that the Goods and any tools or equipment of the Supplier are secured at the Premises and warrants to be responsible for any loss and damage to or theft of the Goods and tools or equipment at the Premises.
- 8.7. Subject to the Supplier's warranty for defective services, the Supplier's liability for any loss and damage associated with, arising from or in connection with the Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

9. WARRANTY

- 9.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 9.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Ch) as may be amended from time to time.
- 9.3. Warranty for Services
- 9.4. Provided that the Customer reports any defect in any Service provided, preferably within fourteen (14) days from the date that the defect became apparent, the Supplier will rectify any defect in the Services within a reasonable period of time.
- 9.5. In respect of all claims under warranty, the Supplier reserves its right to inspect the Services alleged to be defective.
- 9.5.1. To the extent permitted by law the Supplier's liability in respect of defective services that does not constitute a major failure will be limited to:
 - 9.5.1.1. The rectification by the Supplier of the defective Service; or
 - 9.5.1.2. The payment of the reasonable costs of having the Services rectified or supplied again; or
 - 9.5.1.3. The refund of the Price paid by the Customer in respect of the defective Service.
- 9.6. The Supplier shall not be liable to compensate the Customer for any reasonable delay in remedying any defective Services or in assessing the Customer's claim.
- 9.7. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.
- 9.8. Claims made under Warranty
- 9.8.1. Claims for warranty should be made in one of the following ways:
 - 9.8.1.1. The Customer must send the claim in writing to the Supplier's address 2/12 Gasoline Way, Craigieburn VIC 3064;
 - 9.8.1.2. The Customer must email the claim to the Supplier to info@tus.com.au;
 - 9.8.1.3. The Customer must contact the Supplier on the Supplier's business number 03 9333 0246.

10. TERMINATION AND CANCELLATION

- 10.1. Cancellation by Supplier
- 10.1.1. The Supplier may cancel any Order to which these terms and conditions apply by providing no less than seventy two (72) hours' notice to the Supplier before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
- 10.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 10.2.1. Any money payable to the Supplier including any progress payment becomes overdue for payment; or
 - 10.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 10.3. Cancellation by Customer
- 10.3.1. The Customer may cancel any Order by providing no less than seventy two (72) hours' notice to the Supplier before the Services were due to be performed.
- 10.4. In the event that the Customer cancels the Order, the Customer shall be liable for loss and damage suffered by the Supplier; but limited to:
 - 10.4.1. The Price of the Order; or
 - 10.4.2. Any costs or expenses incurred by the Supplier, including the cost of purchasing the Goods from a third party to meet the Customer's Order.
- 10.5. The Supplier may retain any deposit or other sum paid by the Customer in respect of the Price of the Order and offset such sum or deposit in satisfaction or partial satisfaction of any loss and damage suffered by the Supplier as a result of the Customer's cancellation of the Order.

11. ENTIRE AGREEMENT

- 11.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 11.2. The agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 11.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 11.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the Competition and Consumer Act 2010 (Ch) or the Fair Trading Acts in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:
POSITION HELD:
SIGNATURE:
DATE:/...../20.....

NAME:
POSITION HELD:
SIGNATURE:
DATE:/...../20.....