



J&S Drilling – Terms & Conditions of Trade

1. Definitions

- 1.1 “**Contract**” means the terms and conditions contained herein, together with any Proposal, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “**Contractor**” means Drill-Mac Pty Ltd T/A J&S Drilling its successors and assigns or any person acting on behalf of and with the authority of Drill-Mac Pty Ltd T/A J&S Drilling.
- 1.3 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any Proposal, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “**Services**” mean all Services supplied by the Contractor to the Client at the Client’s request from time to time and shall include any goods, documents, or materials (“**Documentation**”) supplied, consumed, created or deposited incidentally by the Contractor in the course of it conducting, or supplying to the Client, any Services.
- 1.5 “**Proposal**” means the letters or other documents prepared by the Contractor and submitted to the Client to describe the scope of Services to be provided, the Personnel, Plant and Equipment proposed to be utilized, and the amount or method of calculation of the Charges.
- 1.6 “**Personnel**” means the operator/s of the Plant and Equipment supplied by the Contractor in order to facilitate the Services (which may include subcontractors where required).
- 1.7 “**Plant**” or “**Equipment**” means the drilling equipment (including all associated accessories, attachments, and ancillary equipment, machinery) required to complete the Services.
- 1.8 “**G.E.T**” means Ground Engaging Tools and refers to any wearing parts such as cutting edges, drill bits and reamers.
- 1.9 “**Site**” means the address nominated by the Client at which the Services are to be undertaken by the Contractor.
- 1.10 “**Working Day**” means Monday to Sunday, and shall include any public holiday, special holiday, or a bank holiday in the state in which this Contract is applied.
- 1.11 “**Working Hours**” means anytime activities are undertaken to deliver the Services on any day including Saturday, Sunday, public holiday, special holiday or bank holiday in the state in which this Contract is applied.
- 1.12 “**Mobilisation**” includes all time and processes required to enable the Contractor’s Personnel and Plant to be available at the Site entry point. Additional time taken to gain Site access entry, including, gaining compliance in order proceed to the drilling phase will be charged at the Stand By Rate.
- 1.13 “**Demobilisation**” includes all activities and processes, from the time the project is completed after the Contractor’s Plant and Equipment is cleaned and loaded ready to leave the Site.
- 1.14 “**Quantities**” all quantities are estimates only based on our understanding of the project requirements on the information provided. Actual quantities required by the job may vary higher or lower, and invoicing will reflect the quantities used.
- 1.15 “**Confidential Information**” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.16 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when utilising the Contractor’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to using the website. If the Client consents to the Contractor’s use of Cookies on the Contractor’s website and later wishes to withdraw that consent, the Client may manage and control the Contractor’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 1.17 “**Charges**” means the price payable (plus any GST where applicable) for the Services as agreed between the Contractor and the Client in accordance with clause 8 of this Contract.
- 1.18 “**GST**” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words ‘include’ and ‘including’, and any variants of those words, will be treated as if followed by the words ‘without limitation’; and
 - (d) a reference to dollars (\$), is a reference to Australian currency; and
 - (e) this Contract is not to be interpreted against the Owner merely because they prepared this Contract; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and

(ii) Special conditions (if any); and

(iii) any schedules.

(g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Contractor.

3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

3.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application (approved) and that a personal guarantee with the Contractor may be required prior to any Services taking place.

3.5 In the event that the supply of Services request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.

3.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Northern Territory) Act 2000, section 10 of the Electronic Transactions Act 2011 (WA), section 14 of the Electronic Transactions (Queensland) Act 2001, (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

3.7 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on the Contractor's website and/or Proposal. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

3.8 The Client accepts and agrees that at any time during the provision of the Services if the Contractor's Personnel is of the opinion that to continue drilling would be to put into jeopardy the Contractor's Plant or Personnel then the Client will accept full responsibility and will indemnify and reimburse the Contractor for any loss, damage or injury incurred from the Client's instruction to continue drilling. This instruction may be entered in the Contractor's daily drill report and signed by the Client before drilling will proceed.

4. Authorised Representatives

4.1 The Client acknowledges that the Contractor shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Services, or variation/s requested thereto by the Client's duly authorised representative.

5. Errors and Omissions

5.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.

5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

6. Change in Control

6.1 The Client shall give the Contractor not less than thirty (30) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, emails, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

7. Bookings

7.1 The Client can make bookings for the Services via phone or e-mail to the Contractor, which shall be accepted upon receipt of a purchase order, or signed Proposal with the Contractor's supplied Proposal number referenced. The Contractor will confirm the booking with a proposed commencement date based on current work commitments and availability of suitable Personnel and Plant.

7.2 In the event the Client needs to make an emergency booking, the Client acknowledges that, the Contractor requires written (electronic) confirmation of acceptance of these terms and conditions of trade. In these circumstances, the Client may be required to pay a deposit of up to fifty percent (50%) of the Mobilisation/Demobilisation Charges and any other cost the Contractor has incurred in accepting the emergency booking, prior to commencement of the Services. The Client must supply a confirmation purchase order in accordance with clause 7.1 as soon as reasonable practical and in any case prior to Mobilisation.

7.3 For bookings, the Client can contact the Contractor as follows:

Perth, WA: Phone: (08) 9437 1637 Email: info@jsdrilling.com.au

Rockhampton, QLD: Phone: (07) 4848 6588 Email: infoqld@jsdrilling.com.au

Darwin, NT: Phone: (08) 8932 4044 Email: infont@jsdrilling.com.au

8. Charges and Payment

8.1 The Charges shall be applied in line with the Contractor's Proposal provided for the Services and shall be either:

(a) as indicated on any invoice provided by the Contractor to the Client; or

- (b) the Contractor's estimated Charges (subject to clause 9.1). The final price can only be ascertained upon completion of the Services. Variances in the estimated Charges of more than ten percent (10%) will be subject to Client approval before proceeding with the Services; or
 - (c) the Contractor's quoted price (subject to clause 9.1) which will be valid for the period stated in the Proposal or otherwise for a period of thirty (30) days; or
 - (d) the Contractor's current Charges as at the date of delivery, according to the Contractor's current schedule of rates are based upon:
 - (i) **Day Rate** – calculated on the number of hours stated in the Contractor's Proposal (charged on a pro-rata basis as required);
 - (ii) **Metre Rate** – will be charged for each diameter as quoted should the methodology be altered, a second final diameter be drilled in a single pass then all smaller diameter Charges will also be charged on the same meters as the final diameter. This will not increase the cost estimate;
 - (iii) **Work Rate** – applies to all activities for all hours or to a maximum as defined within the rates descriptions;
 - (iv) **Standby Rate** – on boarding, cleaning Plant and Equipment, first day kick off meeting, safety meetings, inclement weather, access, pad, water, permitting delays, inductions or training, handwriting JSA's or other Client requirements. Any other delay on Site reasonably outside of the Contractor's control and RDO's hours as stated. Charges will be to a maximum equal to the Working Hours defined in the Work Rate;
 - (v) **All Rates** – are subject to change upon written notice to the Client and shall take effect from the date of notice. In the event that the Client does not accept the revised rates, the Client has the right to terminate without prejudice upon the required notice of termination.
- 8.2 At the Contractor's sole discretion a deposit may be required, the deposit amount or percentage of the Charges will be stipulated prior to the Contractor being in receipt of the Client's confirmation purchase order and shall become immediately due and payable.
- 8.3 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is either fourteen (14) or thirty (30) days following the date of any invoice given to the Client by the Contractor.
- 8.4 No allowance has been made in the Charges for the deduction of retentions. In the event that retentions are made, the Contractor reserves the right to treat retentions as placing the Client's account into default.
- 8.5 Payment may be made by cash, cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.
- 8.6 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Services, and this Contract, shall continue.
- 8.7 The Contractor and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Client has met all of its other obligations to the Contractor.
- 8.8 The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 8.9 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice that is not in dispute.
- 8.10 Unless otherwise stated the Charges do not include GST. In addition to the Charges, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for providing the Contractor's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 9. Additional Charges**
- 9.1 The Contractor reserves the right to change the Charges:
- (a) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (b) where additional Services are required due to unforeseeable circumstances (including, but not limited to, inclement weather (such as poor forecast weather, storms or extreme temperatures, etc.), limitations to accessing the Site, Site related safety considerations and/or health hazards (such as the discovery of asbestos and/or other hazardous materials, etc.), obscured Site defects, latent soil conditions, availability of Plant, geological conditions, including, but not limited to, excessively hard surface, fractured, or cavernous ground, lost circulation, inflow of water, or running sands, or old mine working, etc.), iron reinforcing rods in concrete, prerequisite work by any third party not being completed or underground locations, etc.) which are only discovered on commencement of the Services; or
 - (c) as a result of an increase in the Contractor's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services, increases to the Contractor in the cost of labour, materials, fuel, consumables or due to relevant industry awards (e.g. site allowance, severance pay, meal, travel and/or accommodation allowances, etc.), which are outside the control of the Contractor; or
 - (d) where the Contractor may carry out any necessary additional Works in the event of:
 - (i) any Works that the Contractor considers are required to be undertaken urgently and it is not reasonably practicable to obtain written acceptance from the Client before commencing the variation; or
 - (ii) the Contractor being instructed to undertake extra Works by any statutory authority.

- 9.2 Variations will be charged for on the basis of the Contractor's Proposal, shall be detailed in writing, dated and signed by both parties. However, if the cost of the variation is not agreed upon then the Client will be charged at the Contractor's actual cost plus ten percent (10%) for the Works.
- 9.3 The following additional Charges may be applied during the provision of the Services:
- (a) **"Slow Penetration Rate"** will apply when circumstances (geological conditions, including, but not limited to, excessively hard surface, fractured, or cavernous ground, inflow of water, or running sands, or old mine working, etc.) that are beyond the reasonable control of the Contractor (in accordance with clause 9.1) cause the drill penetration rate to drop to a point where the calculated daily earnings, based on the meter rate, is less than the product of the drilling hours multiplied by the rig work rate;
 - (b) Lost circulation ("**LC**") Charges will apply where LC is encountered and recorded on the Daily Drill Reports. The LC charge will be that the landed cost of all additives used (quoted or otherwise) from this point will be shared equally by both parties until circulation is recorded as being returned. All time delays resulting from LC will be charged at the Standby Rate;
 - (c) **"Adverse Ground Conditions"** Charges will apply where ground conditions are adverse to expectations and/or Client provided information (i.e. sands, gravels, alluvials, boulders, etc.) that require the Contractor to alter the proposed drilling method (i.e. rotary air, rotary mud, casing advance systems), drilling operations may be temporarily suspended to re-evaluate, with the Client, the most appropriate methodology to successfully complete the drilling program. This may include the delivery of additional drilling Equipment and/or consumables that may not have been quoted and where this is the case the charge will be the on Site landed cost plus ten percent (10%). All time delays resulting from Adverse Ground Conditions will be charged at the Standby Rate;
 - (d) **"Damaged/Lost Downhole Plant & Equipment"** Charges will apply when any Plant & Equipment is accidentally lost or damaged through no fault of the Contractor. Replacement, damaged or lost Plant & Equipment will be charged at the on Site landed replacement costs (fair wear and tear expected) plus ten percent (10%). All approved time taken attempting recovery of the Plant & Equipment will be charged at the Rig Work Rate;
 - (e) **"Excessive G.E.T Wear"** Charges will apply when excessive wear is determined by the Contractor. Replacement G.E.T will be charged at the on Site landed cost plus ten percent (10%).
- 10. Provision of the Services**
- 10.1 Subject to clause 10.2 it is the Contractor's responsibility to ensure that the Services start as close as practicable to the proposed commencement date.
- 10.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to:
- (a) any event as detailed under clause 27 and/or inclement weather (such as lightning, strong winds, cyclones, tides or poor light, etc.) ; or
 - (b) any failure by the Client to make a selection, have the Site ready for the Services, or notify the Contractor that the Site is ready;
 - (c) delays caused by time taken by any approval authority for the granting of relevant approvals or permits.
- 10.3 Stand-by rates will apply if scheduled operations are delayed due to circumstances beyond the Contractor's control, including but not limited to:
- (a) Client requested inspections;
 - (b) attending safety inductions and training courses;
 - (c) waiting for:
 - (i) Site access;
 - (ii) the Client to locate or survey drill sites;
 - (iii) instructions and directions
 - (iv) cement to set.
 - (d) rostered days off ("**RDO**") on the fourteenth (14th) day after the commencement of Mobilisation to the Site;
 - (e) job safety analysis ("**JSA**") or hazard analysis;
 - (f) clearance of underground utility services;
 - (g) any other variation to the Contract.
- 10.4 Any time specified by the Contractor for delivery of the Services is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 11. Marine Survey of Barge**
- 11.1 When the Plant is assembled on the barge the class society may require a pre-operational inspection by a Marine Engineer. The cost of this inspection is included in the quote, any additional inspection or surveys required by the Client or DPL will be charged at the rig stand-by rate.
- 12. Site Access and Condition**
- 12.1 Access for Site visits or field work are to be made during normal Working Hours unless otherwise agreed prior to acceptance by the Client of any Proposal submitted by the Contractor.
- 12.2 The Client is solely responsible for providing free, clear, and safe access to the Site, and:
- (a) in the event of on-shore drilling:
 - (i) that such access is suitable to accept the weight of laden trucks and other drilling Equipment as may be deemed necessary by the Contractor; and
 - (ii) that there are no height restrictions likely to be imposed by overhead power lines or any other obstruction) at all times to enable them to undertake the Services; and

- (iii) the Client agrees to indemnify the Contractor against all costs incurred by the Contractor in recovering such vehicles in the event they become bogged or otherwise immovable.
- (b) it is the responsibility of the Client to provide the Contractor while at the Site with adequate access to Site amenities and facilities within the vicinity of the Services (including, but not limited to, permits, traffic management, proof of clearance of underground utility services on the proposed job sites, electricity, water, temporary lighting, toilet, washing and first aid facilities, etc.) where applicable and required in order to maintain drilling operational requirements; and
- (c) the Contractor shall not be liable for any loss or damage to the Site, unless due to the negligence of the Contractor; and
- (d) if the Services are interrupted by the failure of the Client to adhere to the work schedule agreed to between the Contractor and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 9.1.

12.3 *Site Inductions*

- (a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a Site induction prior to or at the time of initial entry, the Client will be liable to pay the hourly charges for that period; or
- (b) where the Contractor is in control of the Site, the Client and/or the Client's third party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Services will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor;
- (c) access to the Site will not be available until all parties have completed the Site induction.

13. **Risk**

- 13.1 Irrespective of whether the Contractor retains ownership of any Documentation all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Contractor may repossess the Documentation in accordance with clause 18.3(e). The Client must insure all Documentation on or before delivery.
- 13.2 The Contractor reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Documentation as a result of the Client's failure to insure in accordance with clause 13.1.
- 13.3 The Contractor shall be entitled to rely on the accuracy of any plans, specifications, geological reports, sample test results and other information provided by the Client. In the event that any of this information provided by the Client and/or marking out of the proposed area by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccuracies where drilling/Site decisions need to be made by the Contractor in the Client absence because the Client has failed to comply with this clause.
- 13.4 If during the provision of the Services, and as a result of extraordinary down hole issues, the Contractor decides (based on industry experience) that the risk is too great to continue the hole, the Contractor shall advise the Client, or the Client's agent, regarding the risk of continuing. Where such advice is not acted on, and the Contractor is requested to continue, then the Contractor shall require the Client or their agent to authorise the continuance of the Services in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent continuance of the Services, and the Client shall reimburse the Contractor for any Plant and Equipment lost or damaged, new cost price of the replacement Plant and Equipment will apply.
- 13.5 In the event that during the course of the Services the Contractor discovers any undisclosed waste and/or hazardous materials then the Contractor reserves the right to halt all Services and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that the Contractor agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 9.1 and shall be in addition to the Charges. The Contractor under no circumstances shall undertake the removal of asbestos.
- 13.6 Drill cuttings shall not be removed from the Site. Any drilling fluids shall be spread over the ground except where environmental or other constraints forbid this. Where special requirements are advised by the Client after the Works have commenced to treat or dispose of such drilling fluid, then any associated treatment or disposal costs shall be at the Client's expense where a provision for these have not allowed for in the Proposal.

14. **Client's Responsibilities**

- 14.1 The Client agrees to remove any items from the vicinity of the Services and agrees that the Contractor shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
- 14.2 The Client acknowledges and accepts that (where applicable) all traffic management, traffic control and associated planning and consultation with relevant parties is to be performed by the Client, and must comply with any and all relevant local councils, regulations and bylaws of government, and legislations of the state and/or territory in which the Services are to be performed (including, but not limited to, the requirements of the Public Transport Authority (Western Australia), Department of Transport and Main Roads (Queensland), or Department of Infrastructure, Planning and Logistics (Northern Territory), etc.). All associated costs incurred are to be paid by the Client.
- 14.3 Location of underground services by a licensed service locator is mandatory prior to commencement of any Services. "**Dial Before You Dig**" must be consulted and any potential underground services are either clearly marked on Site or removed from the Site. The Client is required to provide evidence that this has been completed prior to the commencement of the Services:
 - (a) where it is impractical to engage a service locator, it shall be the Client's responsibility to ensure that, prior to commencement of the Services by the Contractor, that all Sites are clear of any utility services;
 - (b) the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services either not precisely located and notified or removed;
 - (c) if the Client requests the Contractor to engage the service locator then this shall be in addition to the Charges.

15. **Services**

- 15.1 The Client shall:
 - (a) be responsible for:

- (i) making all necessary arrangements where any access is required through private property;
 - (ii) ensuring that no other party ever attempts to use or operate the Plant without the expressed written consent from the Contractor.
- (b) provide a workplace in compliance with all applicable health and safety legislation in operation in the state where the Services are undertaken;
- (c) provide the operator with details of all required PPE. PPE must be worn at all time, such items include, but are not limited to:
- (i) hard hat, safety glasses, long sleeve collar shirt, long pants, steel capped lace-up safety boots, reflective vest; and
 - (ii) failure to comply with this clause may lead to permanent removal from the Site; and
 - (iii) where additional safety or equipment items other than that stated in sub-clause 15.1(c)(i) is requested by the Client, all costs associated shall be in addition to the Charges and charged to the Client's account, plus a margin of ten percent (10%).
- (d) should it be necessary for the Plant to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Plant, and said costs shall be in addition to the Charges and either:
- (i) charged to the Client's account, plus a margin of ten percent (10%); or
 - (ii) payable direct to the salvage company by the Client.
- (e) provide adequate security for any Plant left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that the Contractor arrange such security on the Client's behalf;
- 15.2 The Contractor shall:
- (a) be responsible for ensuring their employees, contractors and persons working under its direction or control shall:
 - (i) take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Plant;
 - (ii) maintain daily maintenance and servicing of the Plant in accordance with the Contractor's OEM pre-start checks: clean, maintain, lubricate and fuel the Plant to the standard and level specified in the manual or as otherwise specified by the Contractor and record such checks in the systems provided;
 - (iii) be qualified and trained personnel who will operate the Plant and that they possess current licences to operate the Plant, vehicle orientation and familiarity;
 - (iv) wear suitable protective and high visibility clothing in line with Site requirements;
 - (v) operate the Plant to a standard of skill, knowledge and competence of an experience and professional operator of the assigned tasks in compliance with all relevant laws;
 - (vi) comply with all health, safety and environmental requirements of the Client and the Site in accordance with any occupational health and safety laws and the Environmental Protection Authority.
- 15.3 The Contractor reserves the right not to enter the Site if the Contractor believes it unsafe, and the Client shall remain liable for the Charges payable until the issue is resolved.
- 15.4 Notwithstanding that the operator of the Plant shall at all times remain an employee or representative of the Contractor and the operator shall operate the Plant in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.
- 15.5 In the event the Client requires an employee of the Contractor to undertake a recognised safety course or medical examination during Working Hours, the Client will be liable to pay all Charges for that period.
- 16. Compliance with Laws**
- 16.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws relating an to building/construction sites and any other relevant safety standards or legislation (including, but not limited to, any environmental requirements in accordance with the Environmental Protection Authority of the country in which the Services are to be performed, etc.).
- 16.2 Furthermore the Contractor will ensure that all Personnel:
- (a) have current and valid licences in place to operate the Plant (including, but not limited to, classes 1, 2 and 3 drillers);
 - (b) have all other suitable licences and certifications required for the provision of the Services.
- 16.3 The Client shall:
- (a) be liable for any costs incurred by the Contractor due to the Client's failure to comply with clause 16.1; and
 - (b) obtain (at the expense of the Client) all licenses, approvals, consents (including resource consents), applications, permits and certifications that may be required for the Services.
- 17. Insurance**
- 17.1 The Contractor shall effect and maintain the following insurances in connection with this provision of the Contractor's Services:
- (a) BroadForm Products & Public Liability Insurance (\$20m);
 - (b) Workers Compensation Insurance (\$50m), *if applicable*;
 - (c) Commercial Motor Vehicle (market value & third party legal liability, \$32.5m)
 - (d) Commercial Hull (market value & third party legal liability, \$5m)
 - (e) Protection & Indemnity Insurance (P&I Club), *if applicable*.
- 17.2 The Contractor may arrange (a) and (c) with an insurance company/broker of their choice.
- 17.3 Before the Contractor commences work and whenever requested in writing by the Client so to do, the Contractor will produce evidence to the Client's satisfaction and approval of the insurance required by this clause 17 have been effected and maintained.
- 18. Title to Documentation**
- 18.1 The Contractor and the Client agree that where it is intended that the ownership of Documentation is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid the Contractor all amounts owing for the Services; and

- (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 18.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Documentation shall continue.
- 18.3 It is further agreed that, until ownership of the Documentation passes to the Client in accordance with clause 18.1:
- (a) the Client is only a bailee of the Documentation and must return the Documentation to the Contractor immediately upon request by the Contractor;
 - (b) the Client holds the benefit of the Client's insurance of the Documentation on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Documentation being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Documentation. If the Client sells, disposes or parts with possession of the Documentation then the Client must hold the proceeds of sale of the Documentation on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
 - (d) the Client shall not charge or grant an encumbrance over the Documentation nor grant nor otherwise give away any interest in the Documentation while they remain the property of the Contractor;
 - (e) the Client irrevocably authorises the Contractor or the Contractor's agent to enter any premises where the Contractor believes the Documentation is kept and recover possession of the Documentation.
- 19. Personal Property Securities Act 2009 ("PPSA")**
- 19.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 19.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Documentation previously supplied by the Contractor to the Client;
 - (b) all Documentation will be supplied in the future by the Contractor to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client.
- 19.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 19.3(a)(i) or 19.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Documentation charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation in favour of a third party without the prior written consent of the Contractor.
- 19.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 19.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 19.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 19.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 19.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 19.3 to 19.5.
- 19.9 Subject to any express provisions to the contrary (including those contained in this clause 19), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 20. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 20.1 The Client must inspect the Contractor's Services on completion of the Services and must within seven (7) days notify the Contractor in writing of any evident defect in the Services or Documentation provided (including the Contractor's workmanship) or of any other failure by the Contractor to comply with the description of, or quote for, the Services which the Contractor was to supply.
- 20.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 20.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 20.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 20.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 20.6 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Documentation which have been provided to the Client which were not defective.

- 20.7 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defective Services or Documentation is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
 - (b) otherwise negated absolutely.

21. Default and Consequences of Default

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (c) the Client 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

- 22.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Services to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 22.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Services. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels delivery of the Services the Client shall provide a minimum of thirty (30) days prior notice and be liable for any and all loss incurred (whether direct or indirect) by the Contractor up to the time of, or as a direct result of the cancellation (including, but not limited to, flight costs, project specific consumables purchased, and any loss of profits) and at the Contractor's sole discretion the Client shall forfeit any deposit paid in accordance with clause 8.2.

23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information");
- If the Client does not wish to allow Cookies to operate in the background when utilising the Contractor's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to using the website. If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.
- 23.4 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or

- (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 23.5 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 23.6 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 23.7 The Contractor may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 23.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 23.3 above;
 - (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 23.9 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
 - (b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 23.10 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.11 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

24. Other Applicable Legislation

- 24.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Services and/or Documentation then the provisions of the Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), may apply.
- 24.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 24.1 (each as applicable), except to the extent permitted by the Act where applicable.

25. Service of Notices

- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

26. Trusts

- 26.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;

- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

27. Force Majeure

- 27.1 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party ("**Force Majeure**").
- 27.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this Contract:
- (a) the party must give the other party prompt written notice of:
 - (i) detailed particulars of the Force Majeure;
 - (ii) so far as is known, the probable extent to which the party will be unable to perform or will be delayed in performing the duty or obligation.
 - (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
 - (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible; and
 - (d) shall be entitled (at its option) to terminate this Contract or extend the time for performance without penalty, if the Force Majeure event continues for a period in excess of fourteen (14) Working Days.

28. General

- 28.1 The failure by either 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. 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.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state and/or territory in which state the Services and/or Documentation were provided by the Contractor to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the courts in Western Australia in which the Contractor has its principal place of business.
- 28.3 Subject to clause 20, the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Charges of the Services).
- 28.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 28.5 The Client cannot licence or assign without the written approval of the Contractor.
- 28.6 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 28.7 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Services to the Client.
- 28.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 28.9 For further information regarding our business particulars please refer to our website <http://www.jsdrilling.com.au> or contact our offices as follows:
- | | | |
|-------------------|-----------------------|---|
| Perth, WA: | Phone: (08) 9437 1637 | Email: info@jsdrilling.com.au |
| Rockhampton, QLD: | Phone: (07) 4848 6588 | Email: infoqld@jsdrilling.com.au |
| Darwin, NT: | Phone: (08) 8932 4044 | Email: infont@jsdrilling.com.au |