

Joe Wagner Group Standard Hire Terms & Conditions ("Terms")

1. Definitions

- 1.1 "Client" means the person/s or company specified as the Client in the Schedule of Rates or as the Applicant in the Credit Application and where not specified the person/s for whom the work is performed.
- 1.2 "JWG" means Joe Wagner Group Pty Ltd ACN 163 372 790
- 1.3 "Works" means the services and materials supplied by JWG to the Client and includes the supply of earthmoving, plant, labour, supply of materials and services as agreed.
- 1.4 "Schedule of Rates" means the schedule provided to the Client with these Terms which sets out the applicable rates for plant hire, supply of materials and any other applicable charges.

2. Basis of Rates

- 2.1 Plant hire rates are inclusive of plant, operator, fuel, maintenance and ground engaging tools unless otherwise specified or agreed.
- 2.2 Hire of plant commences daily when the JWG operator arrives on site and concludes when the operator leaves site. Full plant hire rates are chargeable during prestart meetings, smoko breaks and all other time on site excluding lunch breaks.
- 2.3 No charges apply during periods of plant or operator unavailability.
- 2.4 During the term of the hire, the plant shall be charged for a minimum of 8hrs per day and 5 days per week unless specifically agreed otherwise.
- 2.5 Travel, accommodation, messing and incidentals cost are chargeable for all work further than 30km from JWG's depot at 15 Parker Street, Toowoomba.
- 2.6 Unless otherwise stated or negotiated all quoted rates are for Works completed between 6am and 6pm, Monday to Friday (excluding Public holidays). JWG reserves the right to charge the Client an overtime surcharge for work or travel outside of these times.
- 2.7 JWG reserves the right to vary the rates specified in the Schedule of Rates from time to time in accordance with industry practice. If there is such a variation during the period the Works are being undertaken JWG will provide notice of any variation to the Client prior to the variation being implemented. All price increases will be calculated in a reasonable manner having regard to the actual costs incurred in the supply of the Works.
- 2.8 Without limiting clause 2.7 above where the scope of the Works is altered in any material way JWG reserves the right to review and vary all rates in accordance with the changed nature of the Works.
- 2.9 Where additional materials, goods or incidentals are required for the completion of the Works and a price for the supply of those materials or goods has not been agreed upon then the price for the supply of those materials and goods will be the cost price plus 15%.
- 2.10 JWG may levy additional charges where the Client requires the use of JWG's resources outside of chargeable plant hire time or requires JWG to go beyond the JWG Company Integrated Management System standards. Additional costs may include, but are not limited to, charges for medicals, weed 'n' seed certificates, particular plant safety features, particular Personal Protective Equipment (PPE) and others.
- 2.11 JWG retains title in all goods and materials forming part of the Works supplied to the Client under this Agreement until such time as the Works have been paid for in full. The Client must not seek to transfer, charge or otherwise deal with any goods or materials forming part of the Works until such time as the Works have been paid for in full.

3. Payment Terms

- 3.1 Payment Terms are net seven (7) days with payment being due within seven (7) days from the date of the invoice unless alternative terms are agreed by JWG in writing.
- 3.2 Unless stated otherwise, the price excludes any GST. Any applicable GST, other tax or duty will be payable in addition to the Price.
- 3.3 The Client must pay to JWG interest on any monies outstanding under the Payment Terms calculated from the date following the date upon which payment should have been made at the Reserve Bank of Australia Indicator Lending Rate for Unsecured Variable Personal Loans plus 3%.
- 3.4 JWG reserves the right to charge an administration fee of \$500.00 per month in respect of any monies outstanding under the Payment Terms.
- 3.5 The Client will pay JWG's costs and disbursements incurred in pursuing any recovery action or any other claim or remedy against the Client including collection costs, debt recovery fees and legal costs (on a solicitor and own client basis), resulting from the Client's failure to make due payment.
- 3.6 The Client charges with payment of the monies and compliance with all obligations owed by the Client to JWG all beneficial interest (freehold and leasehold) in any real property held now or in the future by the Client. The Client agrees that upon demand by JWG that the Client will immediately execute a mortgage in registerable form or consent to a caveat with respect to any real property as required by JWG to secure the interest of JWG pursuant to this equitable mortgage. If the Client fails to execute a mortgage within a reasonable time of being requested the Client irrevocably and by way of security appoints each officer and director of JWG to be the Client's true and lawful attorney to execute and register such documents.
- 3.7 The Client grants to JWG a security interest in all of the Client's present or after-acquired property as security for the performance of the Client's obligations in respect of these Terms.

4. Records of Works and Acceptance of Instructions

- 4.1 JWG's records of any Works are deemed conclusive as to the times, quantities and other matters associated with the Works unless those records are manifestly wrong.
- 4.2 Any employee of the Client who signs any work docket or other document in relation to the Works is taken as having, and is deemed to have, full authority to provide that signature.
- 4.3 JWG is authorised, at its discretion, to accept verbal and/or written instructions in relation to the Works from any employee of the Client.

5. Site Access

The Client agrees to allow JWG to gain unrestricted access to the worksite at the times the Works are to be performed and/or while JWG equipment and materials remain on the worksite.

6. Time for Completion

- JWG gives no warranties in relation to the following:
- (a) when the Works are to be performed or delivered;
 - (b) the length of time that any of the Works are to take, whether or not specified; or
 - (c) any completion date for the Works.

7. Services and Other Information

- 7.1 The Client is responsible for identifying, locating and safely working around any services or other items that may be in the proximity of JWG Plant or personnel during the term of the hire and for providing information in relation to these services to JWG.
- 7.2 The Client acknowledges that JWG will rely upon the accuracy and completeness of such information.

8. PPS Law

- 8.1 The Client acknowledges and agrees that to the extent this Agreement creates a PPS lease, as defined in the PPS Act, JWG has a security interest in JWG plant for the purposes of the Personal Property Securities Act 2009 (Cth) (the **PPS Act**).
- 8.2 If JWG does not have a PPS Law registration ensuring a perfected first priority security interest in JWG plant, the term of hire may not be longer than 90 days.
- 8.3 The Client acknowledges that JWG may do anything reasonably necessary in order to perfect the security interest and comply with the requirements of the PPS Act. The Client agrees to provide, without charge, all information and do all things reasonably necessary to assist the JWG to undertake these matters.
- 8.4 The Client waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 8.5 The Client and JWG agree that the security interest JWG has is a PPS lease which does not secure payment or performance of an obligation, and that chapter 4 of the PPS Act does not apply.
- 8.6 The Owner and JWG agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law.

9. Limitation of liability and warranties

- 9.1 JWG will not be liable to the Client in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Client which results from any delay in completion of the Works or any failure of JWG to complete or deliver any part of the Works.
- 9.2 To the extent allowable by law (including the *Competition and Consumer Act 2010*) JWG excludes liability for any loss or damage, including consequential loss, however caused (including by the negligence of JWG) suffered by the Client in connection with the Works.
- 9.3 So far as the law permits, the liability of JWG for a breach of a condition or warranty that cannot be excluded by law is limited, at the option of JWG to:
 - 9.3.1 the replacement or repair of the goods or services;
 - 9.3.2 the supply of equivalent goods or services; or
 - 9.3.3 the cost of replacing or repairing the goods or services or of acquiring equivalent goods or services.
- 9.4 The Client must inspect the Works immediately on completion and/or delivery and notify JWG of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client must allow JWG an opportunity to inspect the Works within a reasonable time following notification of an issue if the Client believes the Works are defective in any way. If the Client fails to comply with these provisions the Works shall be presumed to be free from any defect or damage.

10. Cancellation or Postponement

- 10.1 JWG requires a minimum of 24 hours notice in the event any Works are to be postponed or cancelled.
- 10.2 In the event the Client provides less than 24 hours notice of postponement or cancellation the plant will be charged to the Client at the minimum rate of one (1) day of plant hire.
- 10.3 If JWG has incurred any expenses relating to preparation for any Works which are subsequently cancelled by the Client, the Client is responsible for the payment of those expenses, which are to be calculated in accordance with the Schedule of Rates and these Terms.

11. Termination

Where JWG is no longer able to complete the Works or some part of the Works JWG may terminate this contract by providing notice to the Client.

12. General

- 12.1 JWG may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 12.2 The Client agrees that JWG may review these terms and conditions at any time. If, following any such review, there is to be any change to these Terms during the period of the Works, then the JWG will notify the Client of any proposed changes.
- 12.3 These Terms will take precedence over any other standard terms and conditions of the Client or referenced in the Client's Purchase Order(s).
- 12.4 Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be read down so as to be enforceable, and if it cannot be read down, severed to the extent necessary to make these Terms enforceable.

13. Acceptance of this Agreement

- 13.1 Any instructions received by JWG from the Client for the supply of Works or the Client's acceptance of Works supplied by JWG constitutes acceptance of these Terms.