

## Terms and Conditions

- A. The Client requires the Services and Stormwater Services Australia Pty Ltd (SSA) has agreed to provide the Services.
- B. SSA incorporates trading entities of Stormwater Sydney, Stormwater Newcastle and Stormwater Melbourne.
- C. SSA and the Client have agreed to be bound by the terms and conditions as set out below.

### 1. Interpretation and definitions

- 1.1. Headings are used for convenience only and do not affect the interpretation unless the context indicates a contrary intention. The following rules apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 1.2. A singular word includes the plural and vice versa.
- 1.3. If a word is defined, another part of speech or derivative of that word has a corresponding meaning. Other grammatical forms of defined words or expressions have corresponding meanings.
- 1.4. No rule of construction applies to the disadvantage of a party on the basis that the party has prepared or put forward the T&Cs or any part of the T&Cs.
- 1.5. In these T&Cs, the following capitalised words mean:
  - Business Day** means any day excluding Saturdays, Sundays, national or state public holidays or 27, 28, 29, 30 or 31 December in any year.
  - Client** means the person or entity identified in the Quotation.
  - Contract** means a contract that is formed in accordance with clause 2.
  - Fee** means the fees set out in the Quotation as varied (if at all) under clause 2.6 or clause 3.4 of these T&Cs.
  - Premises** means the premises set out in the Quotation.
  - Program** means the program set out in the relevant Quotation.
  - Quotation** means any document, including in the form of Schedule 1, issued by SSA to the Client which details the proposed Services.
  - Scope of Services** means the scope of the Services as described in a Quotation.
  - Security Interest** has the meaning ascribed by clause 13.1.1 below.
  - Services** mean the work, services and materials set out in the Quotation and as varied (if at all) under clause 6.
  - SSA** means Stormwater Services Australia Pty Ltd ACN 617 625 519, trading as Stormwater Sydney, Stormwater Newcastle, Stormwater Melbourne and any of its related bodies, successors, or assigns.

### 2. T&Cs mean the terms and conditions set out in this document. **Terms and conditions and formation of Contract**

- 2.1. A Contract between the Client and SSA is formed on the earlier of:
  - 2.1.1. when the Client executes a Quotation;
  - 2.1.2. where the Client confirms orally or in writing that a Quotation is accepted;
  - 2.1.3. when the Client pays any deposit payable in relation to a Quotation;
  - 2.1.4. when the Client issues a purchase order or similar document confirming that the

Services and terms of the Quotation are acceptable;

- 2.1.5. when the Client accepts the T&Cs and any relevant Quotation through any software or other electronic means of communication; and

- 2.1.6. SSA commences the Services at the direction of the Client.

- 2.2. Each Contract will comprise the relevant Quotation, and they form the entire Contract between SSA and the Client unless and to the extent the Quotation is varied under clause 2.6 or 3.4 below.
- 2.3. To the extent there is an inconsistency between the T&Cs and a Quotation, the Quotation prevails to the extent of that inconsistency.
- 2.4. The T&Cs apply to all Quotations and Services provided by SSA, whether for ongoing or one-off Services and/or contained in a single or multiple Quotations.
- 2.5. The exception to this is engineering design services which are provided under a separate services agreement.
- 2.6. Where there are multiple Quotations, each Quotation and the T&Cs form a Contract.
- 2.7. Any Quotation or fee estimate provided by SSA is indicative only and subject to any assumptions outlined in the Quotation. To the extent such assumptions are shown, through the conduct of the works for the Services, to be incorrect or incomplete or not applicable, the Quotation or fee estimate to the Client does not comprise the total cost of the Services.
- 2.8. The Client acknowledges that at the time of executing a Quotation, it has been provided with, read, and understood the T&Cs and agrees to be bound by their provisions.
- 2.9. Any purchase order, confirmation, terms and conditions, or other document issued or provided by the Client will not form part of a Contract unless explicitly stated in the Quotation.

### 3. Services

- 3.1. SSA agrees to provide the Services to the Client in accordance with these T&Cs and Quotation in exchange for the Fee.
- 3.2. Unless otherwise agreed and evidenced in any Quotation, other written agreement or notice, the Services will be provided on Business Days, starting no earlier than 7:00 am and finishing no later than 3:30 pm. Any Services provided on Saturday or Sunday will be at SSA's discretion and direction.
- 3.3. The Client acknowledges that performance of some of the Services may take place away from the Premises.
- 3.4. Where the amount of work involved in providing the Services is greater than that stated in the Quotation:
  - 3.4.1. if SSA reasonably believes that the extra work will not exceed 10% of the quotation sum, SSA will carry on providing the Services without contacting the Client, and the Client will be liable for any extra work performed as a result;
  - 3.4.2. if SSA reasonably believes that the extra work will exceed 10% of the quotation sum,

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SSA will seek the Client's approval before carrying on providing the extra services.

### 4. Terms

- 4.1. The Contract is in effect until it is terminated in accordance with clause 10.
- 4.2. Unless terminated in accordance with clause 10, each Contract is in effect from when it is formed in accordance with clause 2 until the Services set out in the relevant Quotation are completed.
- 4.3. The dates set out in the Program may be extended by SSA where some situations or events occur which are outside the reasonable control of SSA which impede or cause delay to the provision of Services. Such situations or events may include, but are not limited to:
  - 4.3.1. where materials required for the provision of the Services have not been delivered on or before the required date or time;
  - 4.3.2. wet or inclement weather;
  - 4.3.3. where the Client requests a change to the Services which is agreed to by SSA;
  - 4.3.4. where the Services have been suspended in accordance with clause 5.4.2.
- 4.4. Six months from the date of SSA's final invoice issued under these T&Cs or a Contract, each party releases the other from all current and future liability under the relevant Contract, save for the Client's obligation to pay the Fee and any claim or dispute that has been notified in writing before that date.

### 5. Payment

- 5.1. The Client agrees to pay SSA the Fee as invoiced by SSA in exchange for the provision of the Services.
- 5.2. The Client is to pay the Fee as invoiced by SSA into the bank account nominated by SSA from time to time or as otherwise directed by SSA in writing.
- 5.3. The Client shall pay any tax invoice issued by SSA as determined by the Quotation.
- 5.4. Where substantial completion of the Services has been undertaken, and any cause beyond the reasonable control of SSA delays the finalisation for a period of more than 10 Business Days, SSA reserves the right to issue the final invoice minus retention to the value of the Service not completed.
- 5.5. If the Client fails to pay any tax invoice issued by SSA under any Contract within 5 Business Days of receiving that invoice:
  - 5.5.1. interest will accrue daily on any outstanding amounts payable at the rate of 10% per annum; and
  - 5.5.2. SSA may immediately suspend the performance of any Services under any Contract without giving any notice to the Client.
- 5.6. All amounts stated, whether orally or in writing, are exclusive of GST unless otherwise stated.

### 6. Variation to Services

- 6.1. Suppose the Client directs SSA, either orally or in writing, to increase or otherwise change the scope of Services under any Quotation. In that case, SSA may

vary the Services and Fee payable pursuant to the Quotation accordingly.

- 6.2. Suppose SSA advises the Client, either orally or in writing, that the conditions found on the Premises during the provision of the services differ from what was reasonably expected and provided for in the quotation. In that case, SSA may offer an alternative solution to achieve a similar outcome. Where an alternative solution is not viable, that portion of the Services may be removed from the Contract.
- 6.3. Where the Client cannot be contracted or 'does not respond to directions and the outcome of the Service can be achieved, SSA reserves the right to complete the Services with the alternative solution.
- 6.4. Where background is included in any Quotation (other than the underlying assumptions), it does not form part of the Quotation and is provided for information purposes only. The proposed Services are described by the Scope of Services and not any background commentary.
- 6.5. Services and solutions provided by SSA may not address the entire solution required by the Client for a variety of reasons, including:
  - 6.5.1. Determining issues underground without extensive investigation and disruption of properties is extremely difficult and expensive. A Client that is not prepared to undertake this level of expense up front needs to be aware that conditions underground are likely to be different from those identified from a basic visual inspection of the surface at the time of issuance of the Quotation and could lead to additional Services and Fees.
  - 6.5.2. Addressing stormwater issues can be difficult to identify, extremely expensive to repair, and solutions are often tailored in a step process. Often SSA will address the initial, key and known issues first and then secondary issues that are discovered during the work. Any initial Quotation may only propose the initial Services, and Clients should be aware that this work might not address the entire solution required for the Client's stormwater issues.

### 7. Limit on Liability

- 7.1. SSA's total liability arising out of or in connection with the T&Cs, Quotation or any Contract, at law, in equity, in tort, under statute or otherwise shall not exceed an amount equal to the Fee payable in respect of the relevant Quotation or Contract. This limitation does not apply to the liability referred to in clauses 7.2 or 7.3.
- 7.2. Clause 7.1 does not limit SSA's liability:
  - 7.2.1. to the extent that it:
    - 7.2.1.1. cannot be limited at law;
    - 7.2.1.2. arises out of SSA's fraud or criminal conduct; or



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- 7.2.1.3. arises out of SSA's abandonment of its obligations under the T&Cs, Quotation or any Contract;
- 7.2.2. to the extent that SSA is entitled to be indemnified for that liability under a policy of insurance or would have been entitled to be indemnified for that liability but for any act or omission of SSA which results in a reduction in the amount payable under a relevant policy of insurance because the insurer denies liability or reduces its liability;
- 7.2.3. for personal injury (including death) or illness of any person; or
- 7.2.4. for infringement by SSA or its subcontractor subcontractors of any intellectual property right or moral right.
- 7.3. If the Australian Consumer Law guarantees apply to the Services, then SSA's liability arising out of or in connection with the applicable Quotation or any Contract is limited to resupplying those services or payment of the cost of resupplying the services.
- 7.4. Notwithstanding any other provision of the T&Cs or Quotation, neither party shall be liable to the other under the T&Cs, Quotation, or any Contract, at law, in equity, under statute or otherwise for:
- 7.4.1. loss of business opportunity;
  - 7.4.2. loss of profit;
  - 7.4.3. loss of goodwill;
  - 7.4.4. loss of earnings;
  - 7.4.5. loss of contracts;
  - 7.4.6. loss of or corruption of data; or
  - 7.4.7. loss of anticipated savings.
- 8. Warranties**
- 8.1. SSA warrants to the Client that:
- (Insurance)** it has obtained all necessary insurances and Work Health & Safety documentation to conduct the Services as set out in these T&Cs.
- (Approvals)** all relevant approvals, permits or other authorisations required to provide the Services under these T&Cs have been received by SSA.
- (Skill, care, and diligence)** SSA will perform the Services to the standard of skill, care and diligence as is reasonably expected of a contractor performing the same or similar services.
- 8.2. The Client warrants to SSA that:
- (Information)** it has provided SSA with all relevant, up-to-date, and accurate information and documents relevant to the Services at the commencement and during the term of this Contract and that SSA may rely on the information and documents provided by the Client.
- (Resources to pay)** it has a reasonable belief that it will have sufficient financial resources to pay for the Services in accordance with these T&Cs. The Client further warrants and undertakes that if its financial position changes such that the Client is unlikely to pay for the Services, it will notify SSA as soon as practicably possible and, in any event, within 5 Business Days.
- (Authority)** it has the required authority or consent to permit and order SSA to undertake the Services and

shall provide evidence of such authority or consent to SSA before the commencement of the Services.

**(Reliance)** SSA may rely on any warranties provided by the Client.

### 9. Dispute

Any dispute between the Client and SSA will be notified in writing by a party to the other and must be delivered by hand or email and adequately detail the dispute. Within seven days of service of a dispute notice, representatives from each party with authority to settle the dispute must meet and use their best endeavours to resolve the dispute. If the dispute is not resolved within seven days of such a meeting taking place (or another period as agreed between the parties) or within 14 days of service of a dispute notice, either party may commence legal proceedings. This clause does not prevent a party from instituting proceedings in a competent court of law to seek injunctive or urgent declaratory relief.

### 10. Termination

10.1. SSA may terminate any Contract (at its sole election and absolute discretion) if the Client:

10.1.1. becomes insolvent, is entered into voluntary administration, or becomes bankrupt; or

10.1.2. breaches a material term of these T&Cs which is not rectified within 5 Business Days of SSA notifying the Client of the breach in writing; or

10.1.3. fails to agree with a solution proposed under clause 6.2 by SSA after a period of 3 Business Days.

10.2. For the purposes of clause 10.1, a material term includes, but is not limited to, the following terms:

10.2.1. Clause 5 (Payment); and

10.2.2. Clause 8 (Warranties).

If SSA reasonably believes that or becomes aware of a breach of any of these material terms, SSA may terminate the any Contract by giving 3 Business Days' notice to the Client.

10.3. The Client may terminate the the relevant Contract if, and only if:

10.3.1. SSA has not started or completed the Services within a reasonable period of time from the date agreed under these T&Cs or the relevant Contract, the Client has served a notice on SSA requesting that SSA commence the Services or provide appropriate reasons as to why the Services cannot be commenced, and SSA does not commence works or does not respond to the notice within 10 Business 'Days' of receiving the notice;

10.3.2. SSA has served a notice on the Client informing the Client that SSA is unable to perform the services within a reasonable time of the relevant Contract coming into effect between the parties;

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10.3.3. SSA becomes insolvent or is entered into voluntary administration;

10.4. If SSA:

- 10.4.1. purports to terminate the T&Cs or any Contract in accordance with clause 10.1; or
- 10.4.2. gives notice purporting to terminate any Contract in accordance with clause 10.1 or 10.2; or
- 10.4.3. becomes aware that the Client otherwise does not fulfil their obligations under these T&Cs or any Contract;

the Client will be liable to SSA for any and all losses and costs, including loss of profit, suffered by SSA.

10.5. Without limiting clause 10.4, if a Contract is terminated by either SSA or the Client before completion of the Services, the Client will be liable to SSA for the cost of:

- 10.5.1. any of SSA's time in performing the Services up to the date that SSA stops providing the Services;
- 10.5.2. any materials that SSA is contractually liable to pay for that have been incurred up to, and including, the date of termination of the relevant Contract;
- 10.5.3. any costs reasonably incurred by SSA associated with demobilising any staff or removing materials from the Premises; and
- 10.5.4. any other costs reasonably incurred by SSA up to, and including, the date of termination of the relevant Contract.

10.6. Termination of any Contract will be without prejudice to any claim that either party may have against the other in respect of any breach of the terms of the T&Cs and/or the Contract that occurred prior to the date of the termination of the relevant Contract.

10.7. Notwithstanding any other provision, SSA may terminate the Contract (at its sole election and absolute discretion) if SSA reasonably believes that an assumption contained in a Quotation is inaccurate.

### 11. Assignment

- 11.1. A party may only assign, novate, or otherwise transfer its rights or obligations under these T&Cs and the Contract with the prior written consent of the other party, which must not be unreasonably withheld.
- 11.2. Without limiting clause 11.1, SSA may subcontract any parts of the Services without the 'Client's consent.

### 12. Notices

- 12.1. Any notice or other communication to or by a party to the Contract:
  - 12.1.1. must be delivered to the electronic and/or physical address last provided to the other party;
  - 12.1.2. must be in writing, legible and in English;

### 13. PPSA

13.1. The Client agrees that:

- 13.1.1. it will assist SSA to enable it to exercise any right in connection with the *Personal Properties Securities Act 2009* (Cth) ('PPSA'), securing payment of the Fees and other amounts payable by the Client to SSA under a Contract ("Security Interest");
- 13.1.2. SSA need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA in enforcing its Security Interest (as that term is used in the PPSA) under Chapter 4 of the PPSA;
- 13.1.3. it will not exercise its rights under sections 142 and 143 of the PPSA if SSA enforces its Security Interest under Chapter 4 of the PPSA;
- 13.1.4. it waives its right to receive Notice of Verification Statements (as that term is used in the PPSA) from SSA;
- 13.1.5. it agrees to do, at its own expense, all things that SSA asks to ensure that SSA's Security Interest is enforceable, perfected and otherwise effective and has the property SSA requires.

### 14. Consumer Law and Sale of Goods Act

The parties agree that, to the greatest extent possible, the Australian Consumer Law and the Sale of Goods Act 1923 (NSW) provisions are excluded and do not apply in relation to these T&Cs.

### 15. Severability

If a provision in these T&Cs is held to be illegal, invalid, void, voidable or unenforceable, that provision shall be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, as required by this clause, then that provision is severable without affecting the validity and enforceability of the remaining parts of that provision or other provisions in the T&Cs.

### 16. Governing law

These T&Cs and the Contract are governed by the laws of the State of New South Wales. The parties submit to the exclusive jurisdiction of the courts of that State.

### 17. Counterparts

These T&Cs or any Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument irrespective of whether compiled physically or electronically.

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