

## **STANDARD TERMS & CONDITIONS**

**Effective 01<sup>st</sup> January 2019**

### **1.0 DEFINITIONS**

In these Standard Terms and Conditions, unless the context otherwise requires, the use of certain words will have the following meaning;

- 1.1 **'the Company'** means ANH Transport Services Pty Ltd and includes its Directors, employees and authorised representatives.
- 1.2 **'the Customer'** means the person or corporation (*incorporated or unincorporated*) to whom the provision of Goods or Services will be rendered.
- 1.3 **'Person'** shall include a PCBU, an individual, their heirs, executors and assigns, a body politic, a corporation, an association, a business entity and, a statutory or other authority (*incorporated or unincorporated*).
- 1.4 **'Supplier'** means a PCBU, a person, business, contractor or corporation that offers for consideration Goods and (or) Services to another entity for which payment is made in accordance with a written or verbal contract or agreement.
- 1.5 **'PCBU'** means a Person Conducting a Business Undertaking.
- 1.6 **'Agent'** means a Person or entity that acts or, is empowered to act for, and (or) represent, another Person or entity.
- 1.7 **'Works'** means each activity, task or undertaking required to complete the work including the provision of Goods or Services.
- 1.8 **'Work Order Instruction'** means the instruction in written, verbal or electronic format, issued by the Customer, detailing the scope of works and the extent of the supply of Goods and Services by the Company to the Customer.
- 1.9 **'Work Order Variation'** means an alteration, other than a cancellation, to the scope of works in the form of an addition, substitution or omission from the original Work Order Instruction.
- 1.10 **'Services'** means all intangible products supplied by the Company to the Customer and are as described in a Work Order Instruction, quotation, Drivers Daily Work Record, Truck Hire Docket, invoice or any other similar document.
- 1.11 **'Goods'** means any tangible item, material or product, supplied, stored, carried or transported by the Company for and on behalf of the Customer in the process of providing the Services.
- 1.12 **'Materials'** means the raw unprocessed or a modified liquid, natural, organic or manufactured substance from which something else can be manufactured.
- 1.13 **'Work Site'** shall mean any site(s) whereby the Works and (or) the provision of Goods or Service is either wholly or partially provided.
- 1.14 **'Hourly Hire'** means the calculation per hour or part thereof, by the Company for the provision of Services and shall be inclusive of all time taken to make effective entry to, or exit from, a Customers Work Site. Hourly Hire will also be inclusive of all delays, however caused and any other additional time taken to perform the Services requested. Hourly Hire in excess of the Minimum Hire Period is measured in 15 (fifteen) minute increments.
- 1.15 **'Travel Time'** means;
  - a) *the time (hourly) taken; or,*
  - b) *the kilometre distance travelled*

by the Company, in travelling to and or from, the Work Site. When Travel Time is not included in another rate structure, Travel Time is charged in addition to any other applicable rate(s).

- 1.16 **'Day Rate'** means the rate charged per hour when the provision of Services starts on a day that is not a Public Holiday and is applicable Monday to Friday commencing at 06.00hr on one day and finishing at 18.00hr on the same day.
- 1.17 **'Night Rate'** means the rate charged per hour when the provision of Services starts on a day that is not a Public Holiday and is applicable Monday to Friday from 18.00hr on one day and finishes at 06.00hr the following day.
- 1.18 **'Weekend Rate'** means the rate charged per hour when the provision of Services starts on a day that is not a Public Holiday and is applicable on a Saturday commencing at 06.00hr and continues to 06.00hr on the following Monday.
- 1.19 **'Public Holiday Rate'** means the rate charged per hour when the provision of Services starts on any day that is a Public Holiday and is applicable from 00.00hr and finishes at 24.00hr on the same day.
- 1.20 **'Minimum Charge'**, means the minimum rate charged per included work period by the Company for the provision of Services as detailed in a Work Order Instruction.
- 1.21 **'EPA Rate'** means the rate charged, for the carriage or transportation of contaminated materials as defined or categorised by the Environment Protection Authority (EPA).
- 1.22 **'Cartage'** means the loading of Goods and the carriage or transportation of said Goods from the point of pick-up to the point of delivery as specified in the Work Order Instruction.
- 1.23 **'Minimum Load'** means that where the carriage of Materials is less than the maximum permissible cartage quantity for that vehicle, a Minimum Load quantity / volume is charged. Minimum Load quantity for each truck type is equal to;
  - a) *Tandem Truck = 10 tonne*
  - b) *Truck and Dog = 20 tonne*
  - c) *Tri axle semi = 20 tonne*
- 1.24 **'Cartage Rate'** means the rate charged for the carriage of Goods and is generally calculated as;
  - a) *\$rate per km x included delivery km*
- 1.25 **'Supplier Service Fee'** means the administration fee charged by the Company, whereby the Company has acted as Agent for the Supplier and is in addition to, the Suppliers Tax Invoice for Goods or Services supplied to the Customer.
- 1.26 **'Cancellation Fee'** means the administration fee charged by the Company when a Work Order Instruction is cancelled, rescheduled or postponed at short notice by the Customer.
- 1.27 **'On-site Waiting Time'** means the additional time taken after the lapse of any time included in the Cartage Rate to provide the Services at the Work Site. On-site Waiting Time is charged in 15 (fifteen) minute or part thereof increments and is in addition to the applicable Cartage Rate. On-site Waiting Time, however so caused, is charged as a portion of the respective Hourly Hire Rate for the vehicle provided.
- 1.28 **'Drivers Daily Work Record'** means the record of the drivers work activities throughout each period.
- 1.29 **'Out-of-Hours'** means the period of time between the closure of Normal Operating Hours on one day and start of Normal Operating Hours on the next business day.

- 1.30 **'Out-of-Hours Service Fee'** means the administration fee charged by the Company for receiving and (or) attending to urgent matters, requiring immediate attention, during periods other than Normal Operating Hours.
- 1.31 **'Out-of-Pocket Expenses'** means those expenses, typically, but not limited to, temporary living away from home expenses which are incurred by the Company.
- 1.32 **'Site Establishment'** means the temporary establishment of an operating facility by the Company, inclusive of relocating plant and equipment and anything else necessary, to another location in preparation of Works to be carried out at the Work Site.

## 2.0 THE PARTIES

- 2.1 These Standard Terms and Conditions shall apply to all engagements and dealings between the Company and the Customer.
- 2.2 Where there is more than one Person named in the Work Order Instruction as the Customer then the obligations of the Customer pursuant to these Standard Terms and Conditions shall be joint and several.

## 3.0 ENTIRE AGREEMENT

- 3.1 These Standard Terms and Conditions constitute a complete and exclusive statement of the agreement and understanding between the Company and the Customer with respect to the subject matter hereof and supersede all prior arrangements between the parties either written, oral or established through the course of dealings.
- 3.2 These Standard Terms and Conditions cannot be varied except in writing and signed by a duly authorised officer of the Company.
- 3.3 Specific and individual clauses contained within these Standard Terms and Conditions may be waived at any time;
- a) *in relation to a specific Work Order Instruction; and,*
  - b) *solely at the discretion of the Company.*
- 3.4 In the event that a Clause, or provision of these Standard Terms and Conditions is unenforceable, that Clause or provision will be severed and all remaining Clause or provision will continue to apply.
- 3.5 In the event that the Company provides Goods or Services to the Customer and that engagement is covered under a Subcontractor Agreement, then the provisions of the Subcontractor Agreement shall take precedence over the Company's Standard Terms and Conditions.

## 4.0 ACCEPTANCE OF CONDITIONS

- 4.1 Receipt of a Work Order Instruction by the Company constitutes the acceptance of these Standard Terms and Conditions by the Customer throughout any negotiations or period of engagement.
- 4.2 The Company may change these Standard Terms and Conditions at any time. The Customer will be bound by the amended Standard Terms and Conditions for all future Work Order Instructions following the notice of the changed Standard Terms and Conditions.

- 4.3 All changes will be deemed to have been received within two (2) business days of publishing on the Company's website, posting, faxing or emailing to the Customer or their representative.
- 4.4 Any discrepancy or misunderstanding arising from these Standard Terms and Conditions shall be read and construed so as to vary the Standard Terms and Conditions, but only to the extent of any inconsistency.

## 5.0 JURISDICTION

- 5.1 The engagement, contract and any other dealings with the Company shall be governed by and construed in accordance with the law in effect in South Australia and the parties hereto accept the jurisdiction of the Courts of South Australia, in relation to any dispute between them.

## 6.0 NORMAL OPERATING HOURS

- 6.1 Normal Operating Hours are;
- Monday to Friday – 06.00hr to 17.00hr**  
**All other times – Out-of-Hours Service**
- 6.2 Unless stated otherwise, all work will be scheduled for Monday to Friday during Normal Operating Hours. Works scheduled for any other time, by the Customer, will be provided and will incur additional fees and (or) charges as per the applicable Rate Schedule(s).

## 7.0 PROVISION OF SERVICES AND CARRIAGE OF MATERIALS

- 7.1 The Company IS NOT a common carrier and shall accept no liability as such. All Goods carried, transported and (or) stored, and, all Services provided by the Company are subject only to these Standard Terms and Conditions.

## 8.0 EXTENT OF WORK

- 8.1 The Customer acknowledges that by placing a Work Order Instruction with the Company, the Customer is making an unconditional offer to enter into a contractual agreement with the Company subject only to these Standard Terms and Conditions.
- 8.2 A Work Order Instruction provided by the Customer shall be a separate and individual engagement for the supply of Goods and (or) Services. Each Work Order Instruction will be subject to a review and acceptance by the Company.
- 8.3 The Work Order Instruction is to detail the scope of works and the total extent of Goods and (or) Services to be supplied by the Company, to the Customer, pursuant to each individual Work Order Instruction.
- 8.4 The Customer may vary or withdraw a Work Order Instruction at any time prior to its acceptance by the Company. Thereafter cancellation fees may apply.
- 8.5 The Customer is solely responsible for satisfying itself, by whatsoever means available, as to the suitability of the included Goods and (or) Services for the Customers intended use, purpose or application.

- 8.6 In the event that the Customer issues a Work Order Variation the Company;
- a) *shall be able to review the Work Order Instruction and its relevant Work Order Variation; and,*
  - b) *shall not be bound to accept any Work Order Variation that is outside the scope of the work; and,*
  - c) *upon acceptance of the Work Order Variation, shall make any changes to the supply of Goods and Services to complete any changes; and,*
  - d) *the Customer agrees to indemnify the Company against all losses and additional expenses associated with, or arising from, the inclusion of a Work Order Variation permitted by the Company.*

## 9.0 EXECUTION AND DELIVERY

- 9.1 With the exception of Out-of-Hours services, Clause 9.2, Work Orders received outside of Normal Operating Hours will be deemed to have been received by the Company at the start of the next business day.
- 9.2 The Customer acknowledges that a Work Order Instruction, or a Work Order Variation, received outside of Normal Operating Hours, at short notice, for which the Customer requires the Company to urgently act upon, requiring immediate attention in some way, will in all cases be deemed to be Out-of-Hours Services and will incur Out-of-Hours Service Fees.
- 9.3 Until a Work Order Instruction has been accepted by the Company, there is no implied, stated, or guarantee that Goods and Services specified in the Work Order Instruction will be supplied by the Company, or other Supplier.
- 9.4 Delivery of Goods at the Work Site is deemed to have taken place when the delivery vehicle arrives at the kerbside adjacent to the Work Site.
- 9.5 The provision of Services is deemed to have commenced two (2) hour prior to the scheduled on-site start time. This provides for Pre-Start inspections, tool box meetings etc and preparation inclusive of the travel to the Work Site by the Company.
- 9.6 It is the responsibility of the Customer to supply the Company with the correct Work Site details and to manage, control and supervise each Work Site, to enable an effective delivery of the Goods or Services to be rendered to the Customer, at the Work Site(s).
- 9.7 Unless instructed in writing prior to the commencement of the provision of Goods or Services in relation to a Work Order Instruction, The Customer, or its representative at the Work Site, is authorised to request and approve changes to the Work Order Instruction. If accepted by the Company, any change to a Work Order Instruction shall be deemed to be a Work Order Variation.
- 9.8 The Company is authorised to import Goods to the Work Site and it shall be taken that the Company has imported the Goods in accordance with a Work Order Instruction by obtaining a signature on the Drivers Daily Work Record, delivery docket or similar document. In the event that no Persons are present, the import of Goods is deemed to have taken place by importing and depositing the Goods at the Work Site.
- 9.9 Prior to exporting Materials, including Materials deemed or suspected of being contaminated waste, from the Work Site, the

Customer will have the necessary supporting documentation and authority to excavate and transfer or deposit the Materials to another location.

- 9.10 When an import or export of Goods cannot be executed at the nominated Work Site, the Customer authorises the Company to return the Goods to the place of origin, or an alternative Work Site and the Customer accepts liability for all additional fees and charges incurred by the Company or Supplier in doing so.
- 9.11 The Customer shall be deemed to authorise the Company to deviate from any pre-determined route that, at the discretion of the Company, is deemed necessary and reasonable in the circumstances.
- 9.12 The failure of the Company to import or export the Goods or provide Services on time, due to unforeseen circumstances shall not entitle either party to treat this contract as repudiated and no Person will be entitled to claim a refund or compensation as a result of the Company exercising its rights under this clause.
- 9.13 A signed Drivers Daily Work Record, delivery docket, Work Order Instruction or similar document supplied by the Company will constitute acceptance of the Goods or Services provided to the Customer. If no Persons are present, then the Customer has twentyfour (24) hours in which to notify the Company of any discrepancy, thereafter the Customer accepts that the Goods or Services have been provided as detailed in the Work Order Instruction, quotation, Drivers Daily Work Record or similar document.

## 10.0 GENERAL CONDITIONS

- 10.1 Pursuant to completing each Work Order Instruction, the Company may from time to time, at its sole discretion, utilise the services of other Suppliers and PCBU's to meet fluctuations in demand. The Customer agrees to accept such Suppliers Terms & Conditions.
- 10.2 The Company accepts no responsibility for any verbal, written or implied Terms and Conditions, warranties or guarantees provided by a Supplier or any third party.
- 10.3 The Company is liable solely for the inclusions accepted in each Work Order Instruction, quotation or other document supplied by the Company.
- 10.4 At all times the Company retains absolute control of any Company owned and operated equipment, inclusive of quantity and type of Goods carried or transported and the effective execution and delivery of Goods or Services provided to the Customer.
- 10.5 Where a clerical or administrative error has been made by the Company, that error can be corrected at any time by the Company.

## 11.0 MINIMUM CHARGE

- 11.1 In a work period when the Company provides Services in accordance with a Work Order Instruction, and the extent of any Services provided in the execution of a Work Order Instruction is less than the Minimum Hire Period stated, then the invoiced minimum charge will be adjusted to equal the applicable Minimum Charge, plus any other fees and charges payable.
- 11.2 In a work period when the extent of Services provided, in accordance with a Work Order Instruction;

- a) *commences in one rate period and transitions into another rate period, then the Hourly Hire Rate charged for the whole period shall be the applicable rate for the majority portion of the work period; or,*
- b) *commences in one rate period and transitions into another rate period and equal time has been spent in each rate period, then the Hourly Hire Rate charged shall be the applicable rate at the start of the work period.*

## 12.0 INDUCTIONS, PERMITS or SIMILAR ARTICLES

- 12.1 The Customer agrees to indemnify the Company, against all losses arising from the extent of the works, pursuant to the requirements of a specific Work Order Instruction, that requires additional training, permits, security clearances / passes, work site inductions or similar articles.
- 12.2 On-site inductions of less than 15 (fifteen) minutes are included in the Cartage Rate. On-site inductions in excess of 15 (fifteen) minutes will be charged to the Customer at the applicable Hourly Hire Rate.

## 13.0 WORK ORDER INSTRUCTION CANCELLATION or POSTPONEMENT

- 13.1 In the event that a Work Order Instruction is cancelled, postponed or re-scheduled in some way, at short notice, through no fault of the Company, or as a result of any cause, howsoever caused, which the Customer is, or should reasonably have been aware, the Customer hereby agrees to pay on demand, the Company, to the extent of any applied Cancellation Fees plus any other applicable fees and charges incurred by the Company in connection with the cancelled Work Order Instruction.
- 13.2 For the purposes of a cancelled, postponed or re-scheduled Work Order Instruction, short notice shall include, but is not limited to;
  - a) *less than 4 x hours prior notice to the start of the work; or,*
  - b) *after 14.00hr on a Monday to Friday, when the work is scheduled to start at a time after the closure of Normal Operating Hours and prior to the next period of Normal Operating Hours*
- 13.3 The Customer acknowledges and agrees that where the Work Order requires that the Company is temporarily working away from home, the Company will not permit a Work Order Instruction to be partially cancelled for any reason. At the instruction of the Customer, and for reasons beyond the control of the Company, the Company may be temporarily required not to work. In all cases the Customer will be liable to pay for the whole work period as if it had been worked.
- 13.4 When a deposit has been paid by the Customer, the Company is authorised to retain the deposit towards payments outstanding and payable to the Company pursuant to Clause 13.0

## 14.0 PRICE

- 14.1 The price of the Goods and Services provided by the Company are as specified in the applicable Rate Schedules, invoice or other similar document provided by the Company. However, such price is provided as a guide only and may vary due to changes in demand, quantity, surcharges, fuel costs, additional fees or taxes.

- 14.2 Goods and Services Tax (GST) will be applied to applicable Goods or Services at the published rate and will be in addition to the price quoted on any documents.
- 14.3 Unless stated otherwise, a Supplier Service Fee will be applied to each Suppliers Tax Invoice total for the provision of the Goods or Services supplied to the Customer pursuant to each Work Order Instruction.

## 15.0 PAYMENT TERMS

- 15.1 A tax invoice will be provided by the Company for all Goods or Services rendered to the Customer. The Company DOES NOT issue or provide monthly account statements.
- 15.2 For all approved Customers of the Company with an account, the price is to be paid by the last day of the calendar month following that in which the Goods or Services were provided by the Company, or as stated in individual and specific Work Order Instructions and quotations.
- 15.3 For all other Customers, the price is to be paid in full on or before the supply of Goods or Services by the Company or as stated in individual and specific Work Order Instructions and quotations.
- 15.4 Should the Customer delay or default in respect to any payment due to the Company, the Company shall have the right, in addition to all other rights or remedies the Company has, to charge interest in excess of such rate charged from time to time by the Company's bank for overdrafts. Such interest shall be calculated from the date the payment was due, to the date of full payment by the Customer. Any payment made by the Customer will first be credited against the interest accrued to the date of payment.
- 15.5 If the Customer defaults in payment the Customer agrees to pay all reasonable debt collection costs, including commissions, interest and legal fees.
- 15.6 The Company may without notice, at any time, cancel an approved account, whereupon all amounts outstanding by the Customer shall become due and payable immediately.
- 15.7 Notwithstanding Clauses 15.2 and 15.3, all amounts owing by the Customer shall be due and payable immediately in the event of the Customer committing an act of bankruptcy, a mortgagee taking possession of the Customer's assets, a receiver of assets is appointed, or, a petition of bankruptcy or liquidation is appointed.
- 15.8 At no time does the Company authorise or consent to, and, the Customer is not entitled to make a deduction or retain a sum of money, from any invoiced price payable to the Company.

## 16.0 INSURANCE

- 16.1 The Customer utilises the Goods or Services provided by the Company at entirely their own risk and acknowledge that plans can be disrupted at any time by unforeseen and unexpected circumstances. The Customer acknowledges that the Company does not include any insurance for Goods carried or transported. The Company recommends that all Customers take out appropriate insurance to cover risks caused by factors outside of the direct control of the Company (including but not limited to, communication delays, industrial disputes, fire or accident, natural catastrophe, acts of terrorism, war, personal accident or illness,

loss or damage to Goods or personal property). The Company is not liable for any losses, injury or damage suffered by the Customer and no claims for compensation will be accepted.

#### **17.0 LIMIT of LIABILITY and INDEMNITY**

- 17.1 The Customer hereby acknowledges and agrees that;
- a) *the Customer will rely solely on the Customers own knowledge and expertise in ascertaining the suitability of the Company, and (or) its Suppliers to provide Goods and (or) Services for a specific Work Order Instruction; and,*
  - b) *any advice or assistance given to the Customer by the Company, or its Supplier, is given as general advice only and shall not be deemed to have been given as that of an expert or adviser; and,*
  - c) *the Customer accepts full responsibility on the placement of a Work Order Instruction with the Company having independently ascertained the extent of any works or content for the supply of Goods and (or) Services; and,*
  - d) *in the event that the Company utilises a Supplier, the Company will act as Agent only for the Goods and (or) Services to be supplied by a Supplier, and are to be provided to the Customer, pursuant to a Work Order Instruction. The Company does not warrant or guarantee any such Goods or Services and the reliability of any communication given by a third party; and,*
  - e) *the Company will not be liable for any loss or damage howsoever suffered by the Customer as a result of incorrect assessment or identification of the extent of works, or selection of the included Goods and (or) Services, nor will the Company give credit for incorrect order placement of Goods and Services.*
- 17.2 To the maximum extent permissible by Law the Customer hereby indemnifies and forever holds harmless the Company, its Agents and Suppliers from any claim for loss, consequential loss, damage, property damage, injury or death, arising out of or caused or contributed to by the negligent or wilful act or omission, or any breach of these Standard Terms and Conditions arising from the engagement and provision of any Goods or Services.
- 17.3 The Company will not be liable to the Customer in contract, in tort or otherwise arising from the performance, execution or as a result or an error regarding information supplied to the Customer before or after delivery of the Goods and Services.

#### **18.0 REFUNDS**

- 18.1 The Customer is solely liable for any loss or damage incurred, howsoever incurred from under or over estimating the extent of works required. Where the Goods or Services have already been supplied, the Company will not provide credit for incorrect order placement.
- 18.2 In accordance with these Standard Terms and Conditions, a refund provided by the Company will be limited only to the amount already paid by the Customer to the Company for a specific Work Order, quotation or invoice, less any non-refundable fees and charges imposed.

#### **19.0 DISPUTES**

- 19.1 In the event that a Customer has a dispute with the Company, they must notify the Company in writing and provide all documentation or information in support of their claim as soon as is practicable and in any event, no later than thirty (30) days following the matter in dispute arising.
- 19.2 The Customer accepts that any decision, process or finding by the Company is not to be construed by any Person, to be an admission of guilt, or wrong doing, on behalf of the Company.
- 19.3 In the event that a dispute is not resolved by the Company to the Customer's reasonable satisfaction, then the matter shall be referred to an independent arbitration service in South Australia.
- 19.4 The party seeking further resolution to any dispute shall be liable to pay all their up-front costs imposed by the arbitration service in the performance of its duties.
- 19.5 In all cases the findings and recommendations of the independent arbitration service will be final and binding on all parties in the matter.

**END OF DOCUMENT**