

# Dig-It Contracting Pty Ltd – Terms & Conditions of Trade

1.	<p><b>1.1 Definitions</b></p> <p>"Client" shall mean Dig-It Contracting Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Dig-It Contracting Pty Ltd.</p> <p>"Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other 5.3 form as provided by Dig-It to the Client</p> <p>"Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.</p> <p>"Works" shall mean Works supplied by Dig-It to the Client (and for which Dig-It will effect all necessary supply of Materials as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Dig-It to the Client.</p> <p>"Materials" shall mean all Materials supplied by Dig-It to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Works as defined above).</p> <p>"Equipment" shall mean Equipment supplied on hire by Dig-It to the Client (and where the context so permits shall include any supply of Works) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Dig-It to the Client.</p> <p>"Price" shall mean the price payable for the Works as agreed between Dig-It and the Client in accordance with clause 3 of this contract.</p>	<p>mark, plate or number on or in the Equipment or in 10.5 any other part that interferes with the Equipment.</p> <p>(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, 10.6 and shall comply with any maintenance schedule as advised by Dig-It to the Client.</p> <p>The Client accepts full responsibility for the safekeeping 10.7 of the Equipment and the Client agrees to insure, or self insure, Dig-It's interest in the Equipment and 10.8 agrees to indemnify Dig-It against physical loss or damage including, but not limited to, the perils of 10.9 accident, fire, theft and burglary and all other usual risks covered by adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. 11. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim. 11.1</p> <p><b>Risk</b></p> <p>If Dig-It retains ownership of the Materials nonetheless, 11.2 all work for the Materials passes to the Client on delivery.</p> <p>If any of the Materials are damaged or destroyed 11.3 following delivery but prior to ownership passing to the Client, Dig-It is entitled to receive all insurance proceeds payable for the Materials. The production of 11.4 these terms and conditions by Dig-It is sufficient evidence of Dig-It's rights to receive the insurance proceeds without the need for any person dealing with 11.5 Dig-It to make further enquiries.</p> <p><b>Underground Locations</b></p> <p>Prior to Dig-It commencing the Works the Client must 11.6 advise Dig-It of the precise location of all underground services on the site and clearly mark the same. The underground main &amp; Services the Client must identify 11.7 include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Teitra slabs, fibre optic cables, oil 11.8 pumping mains, and any other services that may be on site.</p> <p>Whilst Dig-It will take all care to avoid damage to any 11.9 underground services the Client agrees to indemnify Dig-It in respect of all and any liability claims, loss, 12.0 damage, or costs as a result of damage to underground services not precisely located and notified as per clause 7.1.</p> <p><b>Wet Hire</b></p> <p>In the event of "wet" hire of the Equipment the operator 12.1 of the Equipment remains an employee of Dig-It and operates the Equipment in accordance with the Client's instructions. As such Dig-It shall not be liable for any actions of the operator in following the Client's instructions.</p> <p><b>Title</b></p> <p>Dig-It and the Client agree that ownership of the 12.2 Materials shall not pass until:</p> <p>(a) the Client has paid Dig-It all amounts owing for the particular Materials; and</p> <p>(b) the Client has met all other obligations due by the Client to Dig-It in respect of all contracts between 12.3 Dig-It and the Client.</p> <p>Receipt by Dig-It of any form of payment other than 12.4 cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised 12.5 and until then Dig-It's ownership or rights in respect of the Materials shall continue.</p> <p>It is further agreed that:</p> <p>(a) where practicable the Materials shall be kept 12.6 separate and identifiable until Dig-It shall have received payment and all other obligations of the Client are met;</p> <p>(b) until such time as ownership of the Materials shall 12.7 pass from Dig-It to the Client Dig-It may give notice in writing to the Client to return the Materials or any of them to Dig-It. Upon such notice the rights of the Client to obtain ownership or any other interest in the Materials shall cease; and</p> <p>(c) Dig-It shall have the right of stopping the Materials 12.8 in transit whether or not delivery has been made; and</p> <p>(d) the Client fails to return the Materials to Dig-It then Dig-It or Dig-It's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Materials are situated and take 12.9 possession of the Materials.</p> <p>(e) the Client is only a bailee of the Materials and until such time as Dig-It has received payment in full for the Materials then the Client shall hold any proceeds from the sale or disposal of the Materials, 13.0 up to and including the amount the Client owes to Dig-It or the Materials to Dig-It; and</p> <p>(f) the Client shall not deal with the money of Dig-It in any way which may be adverse to Dig-It; and</p> <p>(g) the Client shall not charge the Materials in any way 13.1 nor grant nor otherwise give any interest in the Materials while they remain the property of Dig-It; and</p> <p>(h) Dig-It can issue proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials may not have passed to the Client; and</p> <p>(i) until such time that ownership in the Materials 13.2 passes to the Client, if the Materials are converted into other products, the parties agree that Dig-It will be the owner of the end products.</p> <p><b>Personal Property Securities Act 2009 ("PPSA")</b> 13.3</p> <p>In this clause financing statement, "financing change statement, security agreement, and security interest" has the meaning given to those terms by the PPSA 13.4</p> <p>Not 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 all Materials and/or collateral (account) being a 13.5 monetary obligation of the Client to Dig-It for Works that have previously been supplied and that will be supplied in the future by Dig-It to the Client.</p> <p>The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide 13.6 any further information (such information to be complete, accurate and up-to-date in all respects) which Dig-It may reasonably require to:</p> <p>(i) register a financing statement or financing 13.7 change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be 13.8 registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in 13.9 clause 10.2(a)(i) or 10.2(a)(ii);</p> <p>(b) indemnify and/or demand reimbursement. Dig-It 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 Materials charged 14.0 thereto;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written 14.1 consent of Dig-It;</p> <p>(d) not register, or permit to be registered, a financing 14.2 statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written 14.3 consent of Dig-It;</p> <p>(e) immediately advise Dig-It of any material change in its business practices or selling the Materials which would result in a change in the nature of proceeds 14.4 derived from such sales.</p> <p>Dig-It 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.</p>	<p>The Client hereby waives its rights to receive notices 14.5 under sections 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>The Client waives its rights as a grantor and/or a debtor 14.6 under sections 142 and 143 of the PPSA.</p> <p>Unless otherwise agreed to in writing by Dig-It, the 14.7 Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>The Client shall unconditionally ratify any actions taken 14.8 by Dig-It under clauses 10.2 to 10.5.</p> <p>Subject to any express provisions to the contrary 14.9 nothing in these terms and conditions is intended to affect the Client's contracting out of any of the provisions of the PPSA.</p> <p><b>Defects, Warranties and Returns, Competition and 14.10 Consumer Act 2010 (CCA)</b></p> <p>The Client must inspect all Materials on delivery (or the 14.11 Works on completion) and must within seven (7) days of delivery notify Dig-It in writing of any evident 14.12 defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect 14.3 becomes evident. Upon such notification the Client must allow Dig-It to inspect the Materials or to review 14.4 the Works provided for the Materials/Works.</p> <p>Under applicable State, Territory and Commonwealth 14.5 Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the 14.6 CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>Dig-It acknowledges that nothing in these terms and 14.7 conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>Except as expressly set out in these terms and 14.8 conditions of the Non-Excluded Guarantees, Dig-It makes no warranties or other representations under these terms and conditions 14.9 including but not limited to the quality or suitability of the Materials/Works. Dig-It's liability in respect of these warranties is limited to the fullest extent permitted 15.0 by law.</p> <p>If the Client is a consumer within the meaning of the 15.1 CCA, Dig-It's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>If Dig-It is required to re-supply any Materials under this 15.2 clause or the CCA, but is unable to do so, Dig-It may refund any money the Client has paid for the Materials.</p> <p>If Dig-It is required to rectify, re-supply, or pay the cost 15.3 of re-supplying the Works under this clause or the CCA, but is unable to do so, then Dig-It may refund any money the Client has paid for the Works to the extent that such refund shall take into account the value 15.4 of Works and Materials which have been provided to the Client which were not defective.</p> <p>If the Client is not a consumer within the meaning of the 15.5 CCA, Dig-It's liability for any defect or damage in the Materials is:</p> <p>(a) limited to the value of any express warranty or 15.6 warranty card provided to the Client by Dig-It at Dig-It's sole discretion;</p> <p>(b) limited to any warranty to which Dig-It is entitled, if 15.7 Dig-It did not manufacture the Materials;</p> <p>(c) otherwise negated absolutely.</p> <p>Subject to this clause 11, returns will only be accepted 15.8 provided that:</p> <p>(a) the Client has complied with the provisions of 15.9 clause 11.1; and</p> <p>(b) Dig-It has agreed that the Materials are defective; and</p> <p>(c) the Materials are returned within a reasonable time 16.0 after the Client's cost (if that cost is not significant); and</p> <p>(d) the Materials are returned in as close a condition to 16.1 that in which they were delivered as is possible.</p> <p>Notwithstanding clauses 11.1 to 11.9 but subject to the 16.2 CCA, Dig-It shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any 16.3 Materials;</p> <p>(b) the Client using the Materials for any purpose other 16.4 than that for which they were designed;</p> <p>(c) the Client continuing to use the Materials after any 16.5 defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) interference with the Works by the Client or any 16.6 third party without Dig-It's prior approval;</p> <p>(e) the Client failing to follow any instructions or 16.7 guidelines provided by Dig-It;</p> <p>(f) fair wear and tear, any accident, or act of God. 16.8</p> <p>Notwithstanding anything contained in this clause if 16.9 Dig-It is required by a law to accept a return then Dig-It will accept a return on the conditions imposed by that law.</p> <p><b>Default and Consequences of Default</b> 16.9</p> <p>Interest on any amount due to Dig-It shall accrue daily from the date when payment becomes due, until the date of 17.0 payment, at a rate of two and a half percent (2.5%) per calendar month (and at Dig-It's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement or court order.</p> <p>If the Client owes Dig-It any money the Client shall 17.1 indemnify Dig-It from and against all costs and disbursements incurred by Dig-It in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Dig-It's contract default fee, any bank dishonour fees).</p> <p>Further to any other rights or remedies Dig-It may have 17.2 under this contract, if a Client has made payment to Dig-It by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any 17.3 further costs incurred by Dig-It under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.</p> <p>Without prejudice to any other remedies Dig-It may 17.4 have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Dig-It may suspend or 17.5 terminate the supply of Works to the Client. Dig-It will not be liable to the Client for any loss or damage the Client suffers because Dig-It has exercised its rights under this clause.</p> <p>Without prejudice to Dig-It's other remedies at law Dig-It shall be entitled to cancel all or any part of any order 17.6 of the Client which remains unfulfilled and all amounts owing to Dig-It shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Dig-It becomes overdue, or 17.7 in Dig-It's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client becomes insolvent or bankrupt, convenes 17.8 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</p> <p>(c) a receiver, manager, liquidator (provisional or 17.9 otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p><b>Security And Charge</b> 17.9</p> <p>Despite anything to the contrary contained herein or 18.0 any other law, Dig-It may have a mortgage or charge:</p> <p>(a) where the Client and/or the Guarantor (if any) is the 18.1 owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint 18.2 and/or several interest in the said land, realty or any other asset to Dig-It or Dig-It's nominee to secure all amounts and other monetary obligations payable 18.3 under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Dig-It or Dig-It's nominee shall be entitled to exercise where appropriate a caveat, which caveat shall be</p>	<p>withdrawn once all payments and other monetary 18.4 obligations payable hereunder have been met.</p> <p>(b) should Dig-It elect to proceed in any manner in 18.5 accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Dig-It from and against all Dig-It's costs and disbursements including legal costs on a solicitor basis.</p> <p>(c) the Client and/or the Guarantor (if any) agree to 18.6 irrevocably nominate constitute and appoint Dig-It or Dig-It's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.</p> <p><b>Cancellation</b></p> <p>Dig-It may cancel any contract to which these terms 18.7 and conditions apply or cancel delivery of Works at any time before the Works are delivered by giving written notice to the Client. On giving such notice Dig-It shall repay to the Client any sums paid in respect of the Price. Dig-It shall not be liable for any loss or damage 18.8 whatsoever arising from such cancellation.</p> <p>In the event that the Client cancels delivery of Works 18.9 the Client shall be liable for any loss incurred by Dig-It (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p><b>Privacy Act 1988</b></p> <p>The Client agrees for Dig-It to obtain from a credit 19.0 reference agency (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Dig-It.</p> <p>The Client agrees that Dig-It may exchange information 19.1 about the Client with other credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the 19.2 Client; and/or</p> <p>(c) to exchange information with other credit providers 19.3 about the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Client/including the Client's repayment history in the 19.4 preceding two years.</p> <p>The Client consents to Dig-It being given a consumer 19.5 credit report to collect overdue payment on commercial credit.</p> <p>The Client agrees that personal credit information 19.6 provided may be used and retained by Dig-It for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Works; and/or</p> <p>(b) analysing, verifying and/or checking the Client's 19.7 credit, payment and/or status in relation to the provision of Works; and/or</p> <p>(c) processing any payment instructions, direct debit 19.8 facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in 19.9 relation to the Works.</p> <p>Dig-It may give information about the Client to a CRB 19.10 for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit 19.11 information file about the Client including credit history.</p> <p>The information given to the CRB may include:</p> <p>(a) personal information as outlined in 19.1 above;</p> <p>(b) name of the credit provider and that Dig-It is a 19.12 current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client's application for credit 19.13 or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue 19.14 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 19.15 overdue accounts and Dig-It has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of Dig-It, the Client 19.16 has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Client's overdue 19.17 payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>The Client shall have the right to request (by e-mail) 19.18 from Dig-It:</p> <p>(a) a copy of the information about the Client retained 19.19 by Dig-It and the right to request that Dig-It correct any incorrect information; and</p> <p>(b) that Dig-It does not disclose any personal 19.20 information about the Client for the purpose of direct marketing.</p> <p>Dig-It will destroy personal information upon the Client's 19.21 request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with law.</p> <p>The Client can make a privacy complaint by contacting 19.22 Dig-It via e-mail. Dig-It 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 19.23 complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>.</p> <p><b>General</b></p> <p>If any provision of these terms and conditions shall be 19.24 invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. These terms and conditions and any contract to which they apply shall be governed by the laws of New South 19.25 Wales and are subject to the jurisdiction of the courts of New South Wales.</p> <p>Dig-It shall be under no liability whatsoever to the Client 19.26 for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Dig-It of these terms and 19.27 conditions.</p> <p>In the event of any breach of this contract by Dig-It the 19.28 remedial of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Works.</p> <p>The Client shall not be entitled to set off against, or 19.29 deduct from the Price, any sums owed or claimed to be owed by the Client to the Client or to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>Dig-It may license or sub-contract all or any part of its 19.30 rights and obligations without the Client's consent.</p> <p>The Client agrees that Dig-It may review these terms 19.31 and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Dig-It notifies the Client of such change.</p> <p>Neither party shall be liable for any default due to any 19.32 act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>The failure by Dig-It to enforce any provision of these 19.33 terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Dig-It's right to subsequently enforce that provision.</p>
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