

## **A GRADE ACCESS PTY LTD TERMS AND CONDITIONS**

### **1. Definitions and interpretation**

- 1.1 These terms and conditions prevail over any other document in the case of any conflict or inconsistency. Acceptance by you of a Quotation (including by issuing a purchase order consistent with a Quotation) means that you agree to these terms and conditions.
- 1.2 "We", "Our" and/or "Us" means A Grade Access Pty Ltd ABN 39 577 543 538 and its successors and assigns.
- 1.3 "You" means the entity or person or, if more than one, persons, named as the Customer and includes your successors and assigns to whom we have consented.
- 1.4 "Quotation" means any written quotation submitted by us to you.
- 1.5 "Service Contract" means any contract or agreement arising from our acceptance of any order made by you or your acceptance of any Quotation.
- 1.6 "Goods and Services", "Goods" and/or "Services" means any goods and services the subject of the Service Contract.
- 1.7 "Equipment" means any plant, equipment or machinery the subject of the Service Contract.
- 1.8 "Ordinary Working Hours" means 7.30am to 4pm on a Monday to Friday, excluding public holidays.
- 1.9 "Rates" means the rates quoted by us or in contract, as amended by us from time to time.

### **2. Quotations**

- 2.1 A Quotation may be withdrawn by us at any time before acceptance and in any event shall lapse unless accepted by you within 30 days or such other period as stated in the Quotation. No contractual relationship shall arise therefrom until you confirm the order in writing.
- 2.2 The prices stated in the Quotation are current prices and subject to change by us giving notice to you.
- 2.3 All Goods and Services are sold by us to you on the basis that you will pay any additional costs or expenses not specifically provided for in the Quotation or Service Contract which are imposed by any semi-government or government authority, including but not limited to any tax, stamp duty, fee, levy or charge. Any amounts specified in any Quotation or Service Contract are in Australian dollars and are exclusive of goods and services tax (GST) unless otherwise stated.
- 2.4 In the event that any Services are provided by us that are not specified in a Quotation then you agree to pay for those Services in accordance with the Rates.

### **3. Delivery**

- 3.1 You shall as soon as practicable make available to us all information, documents and other particulars requested by us from time to time. If you become aware of any matter which may change the scope or timing of any Services then you will give written notice to us.
- 3.2 You will pay all costs and expenses incurred by us in arranging carriage, transportation, unloading and reloading of any Goods supplied to you pursuant to a Service Contract, unless otherwise quoted.
- 3.3 Delivery times for provision of Goods and Services are estimates only.
- 3.4 We shall not be liable for any loss or damage howsoever arising resulting from delays in delivery of Goods and Services. Delay in delivery shall not entitle you to terminate the Contract for Sale.
- 3.5 Should our performance of our obligations be hindered or delayed by any circumstances beyond our reasonable control, including but not limited to our inability to procure necessary materials or services, the time for performance of our obligations under the Service Contract shall be extended for such time as may be reasonable.

### **4. Payments**

- 4.1 All payments are required to be made by the due date specified in any invoice issued to you and time shall be of the essence in respect of such payments. If no terms of payment are stipulated, all invoices are payable within 14 days of the date of issue of the invoice by us.
- 4.2 Should you fail to comply with our terms of payment, we reserve the right to:
- (a) cancel any agreed discounts or rebates;

- (b) charge interest on any money payable under any invoice issued to you which is overdue at a rate two percentage points higher than the rate that is or would be charged to us by our bank on overdrafts from time to time; and
  - (c) suspend the carrying out of any further work on 2 business days' written notice of our intention to do so.
- 4.3 Your obligation to pay any invoice issued to you is absolute and unconditional, and you must not withhold any payment, or make a deduction from it for any reason including because you claim to have a set-off, counterclaim, or other right against us or any other person.
- 4.4 Your obligation to pay an amount on the date it becomes due is not affected by any additional amounts which may become due and payable.
- 4.5 If any payment made by you is dishonoured by your bank we may in our absolute discretion charge you a dishonour fee of all bank charges plus a \$50.00 administration fee.
- 5. Default**
- 5.1 In the event that you:
  - (a) default in any payment due and such default continues for a period of seven (7) days after notice is issued by us in writing requiring you to rectify such default;
  - (b) commit any act of bankruptcy or enter into voluntary liquidation or a petition to wind you up is presented in any Court of competent jurisdiction,we may, at our sole discretion and without prejudice to any other rights or remedies we have, terminate the Service Contract immediately by notice in writing to you.
- 5.2 You indemnify us for any costs we incur as a result of the early termination of the Service Contract for any reason including legal costs on a full indemnity basis, costs of obtaining or attempting to obtain payment or otherwise enforcing the Service Contract.
- 6. Repairs and Maintenance**
- 6.1 We will attend to essential faults with the Equipment within a reasonable time from your call. Non-essential faults will be attended to during Ordinary Working Hours. Any non-essential service provided at your request outside these hours will be subject to our normal after hours labour charges as per the Rates.
- 6.2 The classification of faults into essential or non-essential will be at our sole discretion.
- 6.3 Only our service personnel or service contractors engaged by us may service or repair the Equipment while we have an ongoing Service Contract with you.
- 6.4 We will not accept claims for or where there has been any unauthorised service performed on the Equipment and you will be liable for any rectification work required as a result of unauthorised service work.
- 6.5 We will not be liable for any loss that you may suffer as a result of our failure to effect a repair, for any reason, or for loss of product or trade or for any damage caused to property as a result of any malfunction of the Equipment.
- 6.6 You will be responsible for the transport costs of technicians and parts for any servicing or repair to Equipment in locations outside New South Wales.
- 7. Warranty**
- 7.1 We do not give any warranty in relation to any Goods.
- 7.2 We warrant that in the event of any defect in the Services due to faulty workmanship, we may at our absolute discretion:
  - (a) repair at our cost;
  - (b) replace at our cost; or
  - (c) re-perform the Services,provided that we are notified of the defect by you within seven (7) days of performance of the Services, delivery or installation of the Goods and we are satisfied, at our absolute discretion, that the performance of the Services or Goods (as the case may be) were defective at the time of delivery.
- 8. Liability and Indemnity**
- 8.1 You hereby agree:

- (a) to the full extent permitted by law, all express and implied terms, conditions and warranties other than the ones set out in the Service Contract and these terms and conditions are excluded;
- (b) we are not liable for any injury to any person or loss or damage to property arising from any act or omission (including negligent acts or omissions) of us or our agents;
- (c) you indemnify us against any liability or loss (including environmental damage and personal injury) arising from your possession, operation or use of the Equipment and/or the Goods or from any negligent or illegal act or failure to observe your obligations under these terms and conditions by you or your contractors, such indemnity to be a continuing obligation, separate and independent from your other obligations which continue after the Service Contract ends or is terminated.

**9. PPSA**

9.1 Unless otherwise defined in these terms and conditions, the capitalised words in this clause have the meanings given to them in the *Personal Property Securities Act 2009* (NSW) (**PPSA**).

9.2 You acknowledge and agree:

- (a) to grant us a Security Interest in any goods and their Proceeds, including any Accounts and Accessions, by virtue of the payment terms set out above;
- (b) that any purchase by you on credit terms, or any retention of title supply pursuant to these terms, constitutes a Purchase Money Security Interest;
- (c) these terms constitute a Security Agreement pursuant to the PPSA;
- (d) any Goods supplied by us secure payment of the purchase price for the Goods and of any other goods supplied with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
- (e) you will do all things necessary, including providing all information we require, to enable us to register a Financing Statement or Financing Change Statement on the Personal Property Securities Register (**PPSR**) as a Security Interest and a Purchase Money Security Interest pursuant to the PPSA;
- (f) to the maximum extent permitted by law, sections 129(3), 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply;
- (g) to the maximum extent permitted by law, you waive any rights pursuant to, and contract out of, sections 95, 96, 117, 118, 121(4), 123, 129(2), 130, 13 and 157 of the PPSA.

9.3 In addition to any other rights under these terms and conditions, we may exercise any and all remedies set out in the PPSA, including entry into any building or premises owned, occupied or used by you to search for and seize, dispose of or retain the goods in respect of which we have a Security Interest.

9.4 You hereby appoint and authorise us as your attorney to sign in your name all documents which we reasonably consider necessary to enforce or protect our rights and powers under these terms to protect, preserve and enforce our rights under the PPSA.

**10. Term for Ongoing Service Contracts**

10.1 In relation to any ongoing Service Contract, the initial period of such Service Contract will be twelve (12) months and is automatically renewed for a further term of twelve (12) months (or such other term that may be specified in the Service Contract) unless either party advises the other in writing prior to the end of the term that it does not wish to renew the Service Contract. During any renewed term either party may terminate the Service Contract by giving 3 months written notice to the other party.

**11. General**

11.1 All notices, certificates, consents and other communications in connection with these terms and conditions must be in writing, left at or sent to the address (including email address) last notified. If they are sent by post, they are taken to be received on the third day after posting.

11.2 You warrant that you have entered the Service Contract as a principal unless you have told us otherwise, and that you do not enter into the Service Contract as trustee of any trust or settlement.

11.3 You warrant that you have not relied on our skill or judgement in deciding to enter into the Service Contract.

11.4 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.

- 11.5 Our rights, remedies and powers under these terms and conditions are in addition to any other rights, remedies and powers provided by law independently of it.
- 11.6 Any termination does not affect any other right or remedy we have for amounts due to us which remain unpaid.
- 11.7 These terms and conditions contain the entire agreement and understanding between the parties as to the subject matter of these terms and conditions and merges all prior discussions between them and neither of the parties shall be bound by any conditions or representations with respect to the subject matter of these terms and conditions other than as duly set forth herein.
- 11.8 No representations, inducements, promises or agreements between the parties shall be of any force or effect in varying these terms and conditions unless in writing and signed by both parties.
- 11.9 The applicable law shall be the law of the State of New South Wales and the parties to these terms and conditions agree to submit to the jurisdiction of the Courts of New South Wales.
- 11.10 You shall give us not less than 14 days prior written notice of any proposed change of ownership of you and/or any other change in your details (including but not limited to, changes in your name, address, contact phone or fax number/s, or business practice). You shall be liable for any loss incurred by us as a result of your failure to comply with this clause.