

# SITE Geotechnical

## Soil Investigation Testing & Evaluation



**1300 557 260**

**www.sitegeo.com.au**



Accredited for compliance with ISO/IEC 17025 for the tests outlined under our scope in the NATA website ([nata.com.au](http://nata.com.au)).

NATA accredited laboratory number: 17066

We Accept:

Project Type & Services Required (Please tick appropriate selections. All prices include GST)		Our Reference:		(to be advised if not provided)	
<input type="checkbox"/> Site Classification for sandy sites, sites with negligible trees or Outbuildings (Detached building such as a carport, private garage, shed or similar structure) considering shallow foundations (\$1265) <input type="checkbox"/> Detailed Site Classification for treed sites which may require piles/piers (\$3465) <input type="checkbox"/> Site Classification for pools or additions or extensions of existing dwelling considering shallow foundations (\$2310) <input type="checkbox"/> Distressed Structure considering shallow foundations (\$6600) <input type="checkbox"/> Soakage Pits for Stormwater Disposal (\$1760) <input type="checkbox"/> Land Capability Assessment for Wastewater Disposal (\$2310) <input type="checkbox"/> Additional drilling & engineering logs (\$385/hr) <input type="checkbox"/> Engineering & Consultation (\$265/hour): ..... hours <input type="checkbox"/> Density Testing: TBA <input type="checkbox"/> Laboratory Testing: TBA <input type="checkbox"/> Additional Establishment for >50km from tyabb (\$8.25/m) <input type="checkbox"/> Other:		To undertake necessary work or provide a quotation which is cost effective and meets your project objectives, detailed information is required.			
		Unit No.	Street No.	Lot No.	Plan Type / Number
		Project Name or Sub divisional Name (if known)			
		Project Street Name			
		Project Suburb / Town Name			
		Map Reference (if known)	State	Post Code	
		Melway / VicRoads:			
		Project Proposal Details & Any Special Instructions (Description of Attachments & Further Information Supplied)			
		Please send plans and/or other information which you may feel to be relevant.			
Pavement Investigation & Design, and Specialised Geotechnical Investigations: Price upon request.		<b>Total Payable:</b> (including GST)		\$	<b>Date Booked:</b> / /
<b>Extras</b> <input type="checkbox"/> Paper copy of Engineering Report (\$70/copy) <input type="checkbox"/> Quick turnaround Surcharge: Price upon request/availability					
<b>Client Details (Responsible for Payment?)</b> <input type="checkbox"/>					
Client First Name		Client Last Name			
Client Company Name & ABN		Client Address			
Client E-Mail Address		Client Suburb		Client State & Post Code	
Client Phone Number		Client Mobile Number		ID (Drivers License No.)	
<b>Client Representative Details (Responsible for Payment?)</b> <input type="checkbox"/>					
Representative's First Name		Representative's Last Name			
Representative's Company Name & ABN		Representative's Address			
Representative's E-Mail Address		Representative's Suburb		Rep. State & Post Code	
Representative's Phone Number		Representative's Mobile Number		ID (Drivers License No.)	

To contact us: Phone: 1300 557 260 | <http://www.sitegeo.com.au>  
 Site Geotechnical Pty Ltd | ABN:23 114 166 997 | 3/8 Cannery Court Tyabb VIC 3913

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We Accept:



Tax invoices together with receipts of payments will be sent together with, and in the same manner as reports (mail or email).

## Occupational Health & Safety Issues

- |  |   |
|--|---|
| <input type="checkbox"/> Loose dogs or livestock?:                           | <input type="checkbox"/> Access Issues? (padlocks, fences etc.):          |
| <input type="checkbox"/> High/dense vegetation?:                             | <input type="checkbox"/> Any evidence of previous/current contamination?: |
| <input type="checkbox"/> Mobile phone coverage?:                             | Comments:   |
| <input type="checkbox"/> Borehole locations accessible by four wheel drive?: |   |

## Delivery Requirements

- E-mail report to:
- Mail report to (Must select hard copy option on page 1):
- Purchase Order information (if required):
- Invoice to be sent to client    Invoice to be sent to representative    Invoice to be sent to other:

## Acceptance to Proceed

- Please Proceed for total of \$ ..... (Signed by Bill Payer) .....
- Bill Payer Name / Company .....

I certify that the above information is true and correct and that I accept the supply of credit by SG (if applicable). I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Site Geotechnical Pty Ltd T/A Site Geotechnical which form part of, and are intended to be read in conjunction with this Job Request Form and agree to be bound by those conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

## Payment Method

- 7 day Account (pre-qualified customers only)       30 day Account (pre-qualified customers only)
- Cheque (cheque to be received before commencement)
- For payment by EFT, BSB# 033 243 Acct# 305 862 Acct Name: Site Geotechnical Pty Ltd (include our project reference number)
- Cash (to be received before commencement on-site)

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# Site Geotechnical – Terms and Conditions

- 1. Definitions**
- 1.1 "SG" means Site Geotechnical Pty Ltd T/A Site Geotechnical, its successors and assigns, or any person acting on behalf of, and with the authority of, Site Geotechnical Pty Ltd T/A Site Geotechnical.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting SG to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Services" means all services provided by SG to the Client at the Client's request from time to time, including any Reports and/or any advice or recommendations. Where the context so permits the terms "Services" or "Reports" shall be interchangeable for the other.
- 1.4 "Reports" means all reports (including site plans, engineering logs, site and groundwater observations, together), together with notes briefly describing the investigation techniques and their limitations, and any appendices created (and provided to the Client) incidentally by SG in the course of it conducting, or providing to the Client, the Services.
- 1.5 "Fee" means the cost of the Services, as agreed (plus any GST where applicable) between SG and the Client in accordance with clause 7 of this contract.
- 1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted, and is immediately bound, jointly and severally, by this contract if the Client places an order for, or accepts provision of, any Services.
- 2.2 This contract (including these terms and conditions) may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and SG, including any conflicting terms which shall be set aside and negotiated between the Client and SG separately.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 The Client acknowledges that SG supplies a limited number of observations. The Client also accepts that the expert interpretation of such observations may be limited and may not include facets of the site which is not reasonable to know, including, but not limited to the extent of unknown previous human intervention. The Reports however are expert interpolation and extrapolation of the observations requested by the Client.
- 2.5 Further to clause 2.4, the Client acknowledges that a further or higher level of investigation, additional desktop study or additional information over the passage of time and/or observations during construction, and/or full comprehensive testing may lead to a change in the recommendations or findings provided or to cover all contingencies. The Client shall indemnify SG from any loss, damages or costs where the Client declines to instruct SG to carry out further or higher levels of investigations.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that SG shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by SG in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by SG in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of SG, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give SG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, change of trustees or business practice). The Client shall be liable for any loss incurred by SG as a result of the Client's failure to comply with this clause.
- 5. Scope of the Services**
- 5.1 The Services shall be carried out during SG's general business hours of 8:00am to 5:00pm, Monday to Friday. Where the Client requires SG to provide Services outside of these hours (including, but not limited to, overtime and weekends), the Client shall be charged additional rates.
- 5.2 SG shall exercise reasonable skill, care and diligence in the performance of the Services. The assessment and interpretation of the factual data obtained as part of the Services is undertaken in accordance with generally accepted standard consulting practice and with current national and international guidance.
- 5.3 SG shall be entitled to assume that the Services shall be performed continuously, without interruption. The general ground conditions of the entire site shall be determined by SG from the results of a limited number of exploratory holes formed across the given site, with only a small percentage of the total area of the site being investigated and interpolation between the exploratory holes will enable SG to produce a general picture of the subsurface conditions of the site. Whilst it is assumed that the ground conditions encountered and observed through the investigation are typical and representative of the site as a whole, it is acknowledged by the Client that ground conditions can change rapidly (especially in areas of made-up ground). Therefore, any conclusions SG has drawn from the ground investigation should be read in this context and SG accepts no responsibility for any situations resulting from locally unforeseen ground conditions occurring between exploratory holes.
- 5.4 New information, improved practices and changes in legislation may require the reinterpretation of Reports, in whole or in part, after their original issue. SG reserves the right to alter their conclusions and recommendations in the light of further information that may become available.
- 5.5 Unless specifically requested in writing by the Client prior to commencement, the scope of the Services makes no allowance for the reinstatement of the site beyond the simple backfilling of the exploratory positions. Any further reinstatement shall be charged additionally to the Client. Furthermore, SG cannot be held responsible for any issues arising from not reinstating exploratory holes beyond simple backfilling, unless specifically commissioned by the Client, in advance, to do so.
- 5.6 Any excess spoil resulting from intrusive investigation will be stockpiled neatly adjacent to the relevant exploratory hole, unless the Client has specifically allowed for, and commissioned, SG to carry out appropriate measures such as skip hire and/or additional labour for the removal and clean up of such materials.
- Variations**
- 5.7 SG reserves the right to change the Fee in the event of a variation to SG's fee proposal or job request. Any variation from the plan of scheduled Services or specifications will be confirmed by SG either verbally or in writing, detailing the variation, the amended Fee, and require written acceptance by the Client before continuing the Services. Variations shall be charged 9.1 on the basis of SG's fee proposal and/or job request and will be shown as such on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.8 SG reserves the right to treat as a variation any additional Services required, or delay to the Services, due to circumstance outside SG's control, such as:
- (a) unforeseeable problems with the site, including, but not limited to, concealed obstructions (such as rock, wires, pipes, tree roots, building rubble, buried foundations, etc.), adverse ground conditions, made ground or contamination of the site, which are only revealed when undertaking the Services, and which may require further intrusive works, testing and analysis; and
- (b) where additional drilling is required in order to comply with Australian Standards and legal requirements; and
- (c) any requirement for site inductions, additional safety and traffic control or etc.; and
- (d) any delay in the commencement or continuance of the Services, or the progress thereof, caused by the Client or any third party (including, but not limited to, obstructed or poor access to the site, etc.).
- Fee and Payment**
- 5.9 At SG's sole discretion the Fee shall be either:
- (a) as indicated on invoices provided by SG to the Client in respect of Services provided; or
- (b) SG's quoted Fee (subject to clause 6) which shall be binding upon SG provided that the Client shall accept SG's fee proposal in writing within thirty (30) days.
- 5.10 At SG's sole discretion, a non-refundable deposit may be required.
- 5.11 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by SG, which may be:
- (a) on completion of the Services; or
- (b) by way of instalments/progress payments in accordance with SG's payment schedule; or
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice furnished to the Client to SG.
- 5.12 Payment may be made by cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and SG.
- 5.13 Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Client must pay to SG an amount equal to any GST SG must pay for any provision of Services by SG under this contract, or any other contract. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Fee, except where they are expressly included in the Fee.
- 5.14 The Client acknowledges and agrees that the Client's obligations to SG for the provision of the Services shall not cease until:
- (a) the Client has paid SG all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to SG in respect of all contracts between the parties.
- 5.15 Receipt by SG of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then SG's ownership or rights in respect of the Services, and this contract, shall continue.
- 5.16 The Client shall not, without the prior written consent of SG, be entitled to set off against, or deduct from the Fee (by way of counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Client by SG, nor to withhold payment of any invoice because part of that invoice is in dispute.
- Provision of the Services**
- 5.17 Unless specifically requested prior to the issue of the Reports, all Reports will be produced and delivered to the Client electronically. Additional costs shall be incurred by the Client for the production of paper copies.
- 5.18 Any time specified by SG for provision of the Services is an estimate only, and SG will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that SG is unable to provide the Services as agreed solely due to any action or inaction of the Client (including, but not limited to, any failure by the Client to make a selection or provide adequate instructions, have the site ready for the Services or notify SG that the site is ready, etc.), then SG shall be entitled to charge reasonable fees for re-providing the Services at a later time and date.
- 5.19 The Client acknowledges that intrusive site investigation can be a messy job, and whilst SG will endeavour to take all reasonable measures to leave the site in a similar condition to that before the Services, it is the responsibility of the Client to allow for, commission, and notify SG if a particular site requires specific tidying or reinstatement over and above simple backfill.
- Nominated Contractors/Specialists**
- 5.20 SG may (if it considers it appropriate to do so) recommend the engagement of third-party contractors/specialists, who shall be engaged by SG as the authorised agent of the Client, and at the Client's own expense. SG will accept no responsibility, or liability, for the performance of any such contractors/specialists, and does not warrant the accuracy or quality of their work, or warrant that their recommendations are appropriate or adequate, or are fit for their purpose, or that they are not given negligently. The basis of the Fee is that the contractors/specialists selected are competent and very experienced, with a successful proven track record in the type of work required by this contract. The Client agrees that it shall not make any demand on SG, or commence any legal proceedings against SG, and SG shall have no liability, whether in negligence or otherwise, to the Client in relation to any services performed by any contractor/specialist.
- Risk**
- 5.21 The Client acknowledges that subsurface conditions (including, but not limited to, contaminant concentrations and groundwater levels) may vary spatially with time and this should be given due consideration in the event that the information contained within any report produced by SG is used after any significant period of time has elapsed.
- 5.22 The Client acknowledges that:
- (a) Reports provided by SG present observations made during the course of the Services and factual data obtained. The conclusions and recommendations in the Reports may be limited to those which are based on the findings of the survey and information provided by third parties. SG shall be entitled to assume all third party data to be true and correct and shall not be responsible for inaccuracies in such information; and
- (b) Reports are written in the context of an agreed scope of Services and should not be used in a different context; and
- (c) all third party data is ordered based on the site boundary provided by the Client. SG shall not be liable for inaccuracies in site boundaries, and furthermore, any third party information ordered with incorrect boundaries will still be charged to the Client.
- 5.23 SG shall not be liable for any soft spots left at a site due to intrusive investigation undertaken by SG.
- Health and Safety Compliance**
- 5.24 It is the intention of SG and agreed by the Client that any building/construction sites will comply with all occupational health and safety regulations relating to building/construction sites and any other relevant safety standards or legislation.
- 5.25 The Client acknowledges that certain sites may require the use of additional Personal Protective Equipment ("PPE"), such as full face masks and flame retardant overalls. Where this situation arises, all disbursement costs associated will be treated as a variation to the Fee.
- 5.26 In the event that unforeseen contamination or adverse ground conditions are encountered at the site during the course of the Services that require the use of additional PPE, SG shall be entitled to immediately cease work, pending a review of the contamination, and if required, procure the additional PPE at the cost of the Client. Any delay as a result of this shall be treated as a variation to the Fee under clause 6.
- Client's Responsibilities**
- 5.27 The Client shall (at their own cost) as soon as practicable:
- (a) make available to SG all information, documents and other particulars relating to the Client's requirements for the Services, and SG is entitled to rely thereon; and
- (b) make arrangements to enable SG to enter upon the site (and other premises as necessary) to enable SG to provide the Services.
- 5.28 It is the responsibility of the Client to immediately notify SG of any matter (including, but not limited to, adverse ground conditions) that may affect the scope or timing of the Services, and the equipment used. In the event SG delivers equipment to the site and ground conditions are unexpected or vastly differ from SG's expectations or initial findings from a visual observation, SG shall be entitled to treat this as a variation under clause 6.
- 5.29 Due to the nature of the Services the Client acknowledges and agrees that:
- (a) the site must be barricaded off and that restrictions on access to the site may apply. It shall be the Client's responsibility to organise any required barricades and are liable for all costs involved in doing so. SG may, at the Client's written request, provide the necessary items at the additional cost of the Client; and
- (b) the Client shall be liable for any injuries, loss, damages, or costs however arising resulting from the Client's failure to comply with clause 12.3(a); and
- (c) unless allowed for in SG's fee proposal or job request, any reinstatement of the site shall be the Client's responsibility.
- 5.30 It is the intention of SG, and agreed by the Client that:
- (a) the Client shall provide SG with clear and free access to the site to enable SG to complete the Services. It is recommended that the Client commissions SG to undertake a site visit, prior to commencement of the Services, to confirm access arrangements for the appropriate equipment. The Client acknowledges that, whilst limited access equipment is available, there are limits to the depths obtainable with such equipment, with progress being generally slower and additional costs involved. Furthermore, any delay to the Services as a result of lack of access to the site shall be treated as a variation to the Fee under clause 6; and
- (b) in the event SG requires access to an adjoining or adjacent property or land to the site (that is not owned by the Client) in order to undertake the Services, then it is the Client's responsibility to gain permission from the landowner to use the above mentioned property throughout the process of delivering the Services. In the event the landowner denies access or use of the land or property, the Client shall be liable for all costs incurred by SG in gaining permission to access and/or use the property through any legal process that may be deemed necessary, including any delay to the Services; and
- (c) SG is not responsible for the removal of excess spoil and/or arisings from, or clean up of, the building/construction site/s (unless specified otherwise in writing), this is the responsibility of the Client or the Client's agent.
- Underground Locations**
- 5.31 General information relating to the anticipated location of underground services such as sewers, water mains, electricity, gas and telephone will be obtained from underground services information 'Dial Before You Dig', where this information is available. However, the Client acknowledges that not all services within a site may be necessarily registered or clearly defined on plans, and therefore:
- (a) the Client (or any representative or contractor familiar with the site) must assist SG in avoiding underground services; and
- (b) at SG's sole discretion, an 'underground services detector' may be utilised. Should this be required, additional costs associated with this necessary precautionary service will be charged to the Client as a variation under clause 6.
- 5.32 Whilst SG will take all care and necessary measures to avoid damage to any underground services, the Client agrees to indemnify SG in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services
- Defects, the Competition and Consumer Act 2010 ("CCA") and the Fair Trading Acts ("FTA")**
- 5.33 The Client must inspect the Services on completion and must, within seven (7) days of such time, notify SG in writing of any evident defect/damage, shortage in quantity, error or omission (including SG's workmanship), or failure to comply with the Fee submission or this contract. The Client must notify of any other alleged defect in the Services as soon as reasonably possible after any such defect becomes

# Site Geotechnical – Terms and Conditions

- evident. Upon such notification the Client must allow SG to inspect or review the Services provided.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into this contract ("Non-Excluded Guarantees").
- 14.3 SG acknowledges that nothing in this contract purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in this contract, or in respect of the Non-Excluded Guarantees, SG makes no warranties or other representations under this contract, including, but not limited to, the quality or suitability of the Services. SG's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, SG's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If SG is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause, or the CCA, but is unable to do so, then SG may refund any money the Client has paid for the Services, but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 14.7 If the Client is not a consumer within the meaning of the CCA, SG's liability for any defective Services is:
- limited to the value of any express warranty, or warranty card, provided to the Client by SG (at SG's sole discretion); or
  - otherwise negated absolutely.
15. **Samples**
- 15.1 Unless specifically requested otherwise, all samples taken during site investigation works will be held for a period of one (1) month following the issue date of the final report. Should any additional testing of the samples be requested by the Client after this time, then SG shall be required to re-visit the site in order to carry out further site investigation Services, the cost of which shall be charged accordingly to the Client.
16. **Intellectual Property**
- 16.1 SG shall retain copyright of all intellectual property (including, but not limited to, Reports) prepared by SG. The Client shall be granted, by SG, a licence to use this intellectual property only for the agreed scope of Services, and the purpose for which they are intended, conditional upon all of the following:
- the licence applies only to the individual site (or to that part of the site) to which the intellectual property relates. The Client may reproduce Reports, in which SG has copyright, as reasonably required in connection with the project for which the Services are retained, but not otherwise; and
  - the Fee properly due to SG has been paid.
- 16.2 Unless agreed otherwise in writing, all Reports are provided for the sole use of the Client and are confidential to them and their professional advisers.
- 16.3 The Client warrants that all designs or instructions to SG will not cause SG to infringe any patent, registered design or trademark in the execution of the Client's order.
17. **Confidentiality**
- 17.1 Each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.
- 17.2 Confidential Information excludes information:
- generally available in the public domain (without unauthorised disclosure under this contract); and
  - received from a third party entitled to disclose it; and
  - that is independently developed.
18. **Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes SG any money, the Client shall indemnify SG from and against all costs and disbursements incurred by SG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SG's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies SG may have under this contract, if the Client has made payment to SG, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SG under this clause 0 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 18.4 Without prejudice to SG's other remedies at law, SG shall be entitled to cancel all, or any part, of any order of the Client which remains unfulfilled, and all amounts owing to SG shall, whether or not due for payment, become immediately payable if:
- any money payable to SG becomes overdue, or in SG's opinion the Client will be unable to make a payment when it falls due; or
  - the Client has exceeded any applicable credit limit provided by SG;
  - the Client becomes insolvent, convenes 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
19. **Termination**
- 19.1 Without prejudice to any other remedies SG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under this contract, SG may suspend or terminate the provision of Services to the Client. SG will not be liable to the Client for any loss or damage the Client suffers because SG has exercised its rights under this clause.
- 19.2 Either party may suspend or terminate this contract by giving the other party no less than seven (7) days prior written notice of its intention to do so, and in this case:
- the Client shall pay to SG all amounts owing to SG for Services provided up to the date of termination; and
  - SG shall not be liable for any loss or damage whatsoever arising from such termination.
- 19.3 Either party may terminate this contract immediately by written notice to the other party if the other party:
- commits a material breach of any of its obligations under this contract, and if such breach is capable of remedy, the defaulting party does not remedy the breach within seven (7) days of given notice requiring such; or
  - where any event under clause 18.4 applies.
- 19.4 If this contract is terminated for any reason, then such termination (however caused) does not affect any accrued rights or remedies in which the non-defaulting party possesses pursuant to the term of this contract, at law or pursuant to any applicable legislation.
- 19.5 If a party terminates this contract in accordance with clause 19.4 then the defaulting party is liable for, and indemnifies the non-defaulting party against, any loss of whatever nature incurred by the non-defaulting party.
20. **Privacy Act 1988**
- 20.1 The Client agrees for SG to obtain from a credit reporting body (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 SG.
- 20.2 The Client agrees that SG may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
  - to notify other credit providers of a default by the Client; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.3 The Client consents to SG being given a consumer credit report to collect overdue payment on commercial credit.
- 20.4 The Client agrees that personal credit information provided may be used and retained by SG for the following purposes (and for other agreed purposes or required by):
- the provision of Services; and/or
  - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - enabling the collection of amounts outstanding in relation to the Services.
- 20.5 SG may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report; and/or
  - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.6 The information given to the CRB may include:
- personal information as outlined in 20.1 above; and/or
  - name of the credit provider and that SG is a current credit provider to the Client; and/or
  - whether the credit provider is a licensee; and/or
  - type of consumer credit; and/or
  - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); and/or
  - advice of consumer credit defaults, overdue 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 overdue accounts and SG has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); and/or
  - information that, in the opinion of SG, the Client has committed a serious credit infringement; and/or
  - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.7 The Client shall have the right to request (by email) (a) a copy of the information about the Client retained by SG and the right to request that SG correct any incorrect information; and/or
- (b) that SG does not disclose any personal information about the Client for the purpose of direct marketing.
- 20.8 SG will destroy personal information upon the Client's request (by email) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 20.9 The Client can make a privacy complaint by contacting SG via email. SG 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. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
21. **Personal Property Securities Act 2009 ("PPSA")**
- 21.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 21.2 Upon assenting to this contract in writing the Client acknowledges and agrees that this contract constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- all Reports that have previously provided (if any), and that will be provided in the future, by SG to the Client; and
  - all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to SG for Services – that have previously been provided (if any), and that will be provided in the future, by SG to the Client.
- 21.3 The Client undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SG may reasonably require to:
    - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register; or
    - register any other document required to be registered by the PPSA; or
    - correct a defect in a statement referred to in clause 21.3(a)(i) or 21.3(a)(ii);
  - indemnify, and upon demand reimburse, SG 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 registration made thereby; and
  - not register a financing change statement in respect of a security interest without the prior written consent of SG; and
  - not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of SG.
- 21.4 SG and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by this contract.
- 21.5 The Client waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 21.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 21.7 Unless otherwise agreed to in writing by SG, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 21.8 The Client must unconditionally ratify any actions taken by SG under clauses 21.2 to 21.5.
- 21.9 Subject to any express provisions to the contrary (including those contained in this clause 0), nothing in this contract is intended to have the effect of contracting out of any of the provisions of the PPSA.
22. **Security and Charge**
- 22.1 In consideration of SG agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under this contract (including, but not limited to, the payment of any money).
- 22.2 The Client indemnifies SG from and against all SG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SG's rights under this clause.
- 22.3 The Client irrevocably appoints SG (and each director of SG) as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 0 including, but not limited to, signing any document on the Client's behalf.
23. **Limitation of Liability**
- 23.1 Subject to clause 0, SG shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by SG of this contract. In the event of any breach of this contract by SG the remedies of the Client shall be limited to damages and SG's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Services, or for any breach of this contract, or of any duty owed to the Client in connection with them shall be limited to the amount of the Fee.
- 23.2 For the avoidance of doubt, nothing in this contract shall exclude or restrict SG's liability for the death or personal injury to any person resulting from SG's negligence.
- 23.3 SG shall be discharged for all liability in respect of the Services, whether under the law of contract, tort or otherwise, after expiration of one (1) year from the date of the final invoice claim for the Services.
24. **Building and Construction Industry Security of Payment Act 2002**
- 24.1 At SG's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 24.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
25. **Service of Notices**
- 25.1 Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
  - by leaving it at the address of the other party as stated in this contract;
  - by sending it by registered post to the address of the other party as stated in this contract;
  - if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission; and
  - if sent by email to the other party's last known email address.
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
26. **Trusts**
- 26.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not SG may have notice of the Trust, the Client covenants with SG as follows:
- the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - the Client will not without consent in writing of SG (SG will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - the removal, replacement or retirement of the Client as trustee of the Trust;
    - any alteration to or variation of the terms of the Trust;
    - any advancement or distribution of capital of the Trust; or
    - any resettlement of the trust property.
27. **General**
- 27.1 The failure by either party to enforce any provision of this contract (including any term or condition) shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of this contract (including any term or condition) shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2 These terms and conditions, and the contract to which they apply, shall be governed by the laws of Victoria, the State in which SG has its principal place of business, and are subject to the jurisdiction of the courts in that State.
- 27.3 SG may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 27.4 The Client cannot licence or assign without the written approval of SG.
- 27.5 SG may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of SG's sub-contractors without the authority of SG.
- 27.6 The Client agrees that SG may amend this contract (including any term or condition) at any time. If SG makes a change thereto, then that change will take effect from the date on which the Client accepts such change after notification by SG. The Client will be taken to have accepted such changes if the Client makes a further request for SG to provide Services to the Client.
- 27.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.8 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.