
BOB'S IRRIGATION SERVICES

Terms and Conditions of Supply

By signing the Quotation, or by submitting an order to the Supplier, the Customer accepts these terms and conditions of supply.

1. Quotes, Contracts and Terms

- (a) A Quotation given by the Supplier does not constitute an offer to provide any Goods and/or Services.
- (b) A Quotation is valid for thirty (30) days only and the Supplier reserves the right to withdraw or amend it at any time.
- (c) A binding contract will only be formed after the Supplier accepts an order from a Customer and will be subject to these terms and conditions.

2. Supply of Goods and/or Services

- (a) The Supplier will supply the Goods and/or the Services in a timely manner in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Customer.
- (b) If the Quotation or proposal specifies that a deposit is payable, the Customer must pay the deposit to the Supplier when accepting the Quotation.

3. Description of the Goods and/or Services

Any quantities, weights, dimensions included in any quotation, proposal, catalogue, advertisement, illustrated matter or price list are approximate or recommended only and will not be binding unless and to the extent that such details are specified in a contract with a Customer.

4. Ownership of Documents

Technical documents, specifications, formulae, data or drawings submitted to a Customer before or at any time after a Contract is formed remain the property of the Supplier at all times and may not be transmitted to a third party, copied, reproduced or used by the Customer unless the terms of the Contract permit it or the prior written permission of the Supplier is obtained.

5. General Warranties Excluded

- (a) The Goods and/or Services comprise the Supplier's assessment of the best way to manage the Customer's requirements as detailed to the Supplier at the time. Unless a specific representation about performance or outcome is made part of the Contract, any expected results from the Goods and/or Services communicated by the Supplier to the Customer are the Supplier's best assessment of the most likely outcome for the Customer and do not and shall not be deemed to constitute a warranty or guarantee by the Supplier that any expected results will in fact be achieved by the Goods and/or Services.
- (b) Subject to the provisions of the Contract, any and all express or implied terms, conditions, warranties and representations with respect to the standard, quality, condition, fitness, durability or suitability of the Goods and/or

Services (except those expressly contained in these terms and conditions or otherwise expressly agreed to in writing by the Supplier) are, to the extent that the same may be excluded by law, hereby expressly negated and excluded.

- (c) The Customer must satisfy itself as to the standard, quality and suitability of the Goods and the fitness of the Goods for the purpose(s) for which the Goods are being purchased and as to its compliance with the description (if any) of such Goods.

- (d) These terms and conditions shall not exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to a Contract of all or any of the provisions of the *Competition and Consumer Act 2010* (the **CCA**) or the exercise of a right conferred by such a provision of any liability of the Supplier for breach of a guarantee implied by such a provision but all other guarantees, conditions or warranties which would or might otherwise be implied are hereby expressly excluded or negated.

- (e) To the extent that the CCA permits the Supplier to limit its liability for a breach of a guarantee implied pursuant to the CCA, then unless limited by the CCA, the Supplier's liability for such breach including any consequential loss which the Customer or any third party may sustain or incur shall be limited, at the option of the Supplier, to:

- (i) the replacement or repair of the Goods supplied to the Customer;
- (ii) resupplying the Service;
- (iii) the supply to the Customer of equivalent Goods; or
- (iv) the payment of the cost or replacing or repairing the Goods and/or Services or of having the equivalent Goods and/or Services supplied again,

whichever may be determined in the absolute discretion of the Supplier to be appropriate in the circumstances.

6. Warranties

6.1 Supplier's warranties

- (a) The Supplier is not bound by any condition, warranty, or representation, which is not expressly set out herein or agreed to in writing by the Supplier.
- (b) The Supplier warrants that:
 - (i) all of the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;

- (ii) all of the Services will be in accordance with any applicable standards set by the Standards Association of Australia;
- (iii) in relation to the supply of the Services:
 - (A) the Supplier and any of its employees, agents and representatives will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the supply of comparable work; and
 - (B) any equipment used by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Customer; and
- (iv) in relation to the provision of Goods:
 - (A) the Goods will be of merchantable quality;
 - (B) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods; and
 - (C) the Supplier has good and marketable title to the Goods and the Customer will receive title to the Goods free of any charge or encumbrance.
- (c) The Supplier provides no warranty with respect to any goods and/or services which are not supplied by the Supplier.

6.2 Customer's warranties

Subject to the provisions of these terms and conditions, the Customer warrants that:

- (a) all information and materials supplied to the Supplier and which have formed the basis for the Quotation (including any variation thereto) are true and correct in every respect and are not misleading or deceptive, and the Customer has not withheld from the Supplier

- any information concerning the Customer, its experience or expertise which might reasonably be supposed to be material to the Supplier in determining whether or not to provide the Services and/or Goods or the price at which or the terms on which the Supplier would be prepared to provide the Services and/or Goods; and
- (b) in relation to the provision of any goods and/or services to the Supplier for use directly or indirectly in association with the Contract:
 - (i) the goods will be of merchantable quality;
 - (ii) the goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those goods; and
 - (iii) the Customer has good and marketable title to the goods

7. Defects Liability

7.1 Scope

- (a) This Part 6 applies only if:
 - (i) the Contract grants to the Customer a specific warranty in respect of the Services and/or Goods; and/or
 - (ii) the Services and/or Goods are subject to a statutory warranty and/or any consumer guarantee with respect to defective products; and
 - (iii) the alleged defect is due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose.
- (b) Further, and without limitation, the Supplier will not be responsible for:
 - (i) any defects in material and/or goods not supplied by the Supplier;
 - (ii) any loss sustained by the Customer arising from any defect in goods not supplied by the Supplier;
 - (iii) defects in any Goods caused by the Customer's, or by a third party's, alteration, addition, misuse or neglect;
 - (iv) Goods and/or Services, which have been altered or added to or otherwise modified without the prior written consent of the Supplier.

7.2 First right

If an alleged defect arises in the Services and/or Goods supplied by the Supplier, the Customer must:

- (a) provide the Supplier with the first right to rectify the alleged deficiency; and

- (b) comply with the notification process in clause 7.3.

7.3 Notification process

- (a) The Customer must inspect the Goods and/or Services on delivery/completion and must within seven (7) days of delivery/completion notify the Supplier in writing of any evidence defect/damage, shortage in quantity, or failure to comply with the description of the Quotation.
- (b) The Customer must notify of any other alleged defect in the Goods and/or Services as soon as reasonably practicable after any such defect becomes evident.
- (c) With the timeframes specified in clause 7.3(a) and (b), the Customer must provide a notice to the Supplier setting out the full particulars of the deficiency (**Defects Notices**) and (if appropriate) deliver the Goods to the Supplier so as to enable them to be examined.

7.4 Examination and rectification

- (a) Upon receipt of a Defects Notice, the Supplier may conduct an examination and/or assessment in respect of the Services and/or Goods by arrangement with the Customer, at the Supplier's expense.
- (b) If the Goods are capable of being returned to the Supplier for examination and/or assessment, the Customer must return to Goods to the Supplier at the Customer's expense.
- (c) If following the examination and/or assessment the Supplier is of the reasonable view that the Services and/or Goods are defective, the Supplier must correct such deficiency at no cost to the Customer by using the methods specified in clause 5(e).
- (d) If the Supplier fails to (as the case requires):
 - (i) correct any deficiency in the Services identified by the Customer pursuant to clause 7.3; or
 - (ii) rectify any defect in any of the Goods identified by the Customer pursuant to clause 7.3,

the Customer may correct any deficient Services or rectify any defect in any of the Goods (as the case may be) at the Supplier's risk and cost and any reasonable costs and expenses incurred by the Customer will be recoverable from the Supplier as a debt due and payable.

8. Release and Indemnity

- (a) The Customer is liable for, and indemnifies the Supplier from and against, all loss and damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:
 - (i) the Contract;
 - (ii) any breach of the Contract by the Customer;

- (iii) pursuing payment of any outstanding amounts owed to the Supplier by the Customer;
- (iv) any claim or threatened claim by a third party in connection with the Goods and/or Services; and
- (v) any unlawful or negligent act or omission of the Customer or any person acting or purporting to act on behalf of the Customer.

- (b) After delivery of the Goods to the Customer, the Supplier shall not be responsible or liable to the Customer, and the Customer releases and discharges the Supplier (in the absence of any wilful or negligent act or omission on the part of the Supplier) for and from any Liabilities caused by or arising out of or relating in any manner or incidental to the use of the Goods or the delivery of the Goods.

9. Price and Payment

9.1 Contract Price

- (a) The Customer must pay the Contract Price to the Supplier.
- (b) Unless otherwise specified in the Contract, the Contract Price is exclusive of:
 - (i) GST and any other applicable taxes and/or charges; and
 - (ii) any delivery costs.

9.2 Variation

- The Supplier reserves the right to change the Contract Price if:
- (a) a variation to the Quotation is requested by the Customer; and/or
 - (b) a variation from the plan of scheduled works or specifications for the Services occurs (including, but not limited to, any variation due to unforeseen circumstances, or due to fluctuations in the currency exchange rate, or as a result of increases to the Supplier in the cost of materials and labour).

9.3 Method of payment

Unless otherwise provided in the Contract, all payments required to be made to the Supplier by the Customer pursuant to the Contract in relation to the supply of the Services and/or Goods must be made in the currency specified in the Quotation by electronic funds transfer into the Supplier's nominated bank account. If no currency is specified then it shall be treated as Australian Dollars unless proven to the contrary.

9.4 Payment of Tax Invoices

- (a) Unless otherwise agreed by the Supplier in writing, payment for all Goods and/or Services is to be made within 21 days of the date of the invoice.
- (b) Non-payment of any or all Goods and/or Services by the due date will be deemed by the Supplier to be a breach of the Contract and, in addition to any other rights the Supplier may have, the Supplier may:
 - (i) terminate any Contract;

- (ii) withhold delivery of the Goods to the Customer;
 - (iii) decline to supply any further Goods to the Customer;
 - (iv) change the terms on which any future Goods are provided, including to a cash on delivery basis;
 - (v) immediately depart from any premises upon which the Supplier is providing the Goods and/or Services to the Customer, and in doing so, remove all property of the Supplier used by the Supplier in performance of the Contract; and
 - (vi) demand payment of all monies payable by the Customer to the Supplier, whether or not the amounts claimed are due and payable.
- (h) The Customer must promptly do anything required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- (i) Nothing in this clause 10 is limited by any other provision of these terms and conditions or any other agreement between the parties.

11. Delivery

11.1 Delivery of Services

- (a) The Supply of any Services by the Supplier to the Customer for the installation, repair or maintenance of any object owned or in the possession of the Customer shall be in accordance with the design and specifications of the original manufacturer of the object wherever possible unless the Supplier is otherwise directed by the Customer.
- (b) Where the Customer requires the Supplier to design any object for installation, repair or maintenance purposes the Supplier shall have the right to require the Customer (at the Customer's cost) to obtain such expert services as is necessary including engineer's specifications or drawings in order to ensure that the design and specifications meet relevant safety standards. The Supplier does not hold itself out as having the necessary expertise and to the fullest extent permissible by the law accepts no responsibility for the design and specifications.
- (c) It shall be the responsibility of the Customer to provide wherever possible the specifications of the original manufacturer of the object and any manuals and other documents which relate to the object. These are to be provided to the Supplier prior to the provision of the Supply of the Services in relation to the object.
- (d) Where the Customer requires the object to be installed, repaired or maintained in any way which results in a modification of the manufacturer's specifications for the object it shall be the responsibility of the Customer to ensure that such modification is legal and safe. The Supplier accepts no responsibility for modification to an object outside the manufacturer's specifications unless the manufacturer has provided in writing approval for such modifications.
- (e) The Customer acknowledges that where the object is to be modified by the Supplier, the Supplier shall be indemnified by the Customer for any loss or damage which the Customer or any other person suffers as a result of the modification.

11.2 Delivery in General

- (a) The Supplier must deliver the Goods and/or Services (if applicable) to the location specified in the Contract and the Customer will be liable for the delivery costs.

9.5 GST

All prices are exclusive of GST unless otherwise stated. The Customer agrees to pay the GST on any taxable supply made by the Supplier to the Customer.

9.6 Disputed Tax Invoices

If the Customer disputes any amount shown on a invoice, it will notify the Supplier within a reasonable time and in the notice will specify why it disputes any amount.

10. Application of the Personal Property Security Act 2009 ("PPSA")

- (a) This clause applies to the extent that the Supplier's interest in any Goods is a security interest.
- (b) The Customer acknowledges and agrees that the Supplier may apply to register a security interest in the Goods at any time before or after delivery of the Goods.
- (c) The Customer waives its right under section 157 of the PPSA to receive notice of any verification of the registration.
- (d) The Supplier can apply amounts it receives from the Customer towards amounts owing to it in such order as the Supplier chooses.
- (e) If the Customer defaults in the performance of any obligation owed to the Supplier under any Contract or any other agreement for the Supplier to supply Goods and/or Services to the Customer, the Supplier may enforce its security interest in any Goods by exercising all or any of its rights under this terms and conditions or the PPSA.
- (f) To the maximum extent permitted by law, the Customer and the Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- (g) The Customer and the Supplier agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in

- (b) Any period or dates quoted for delivery of Goods and/or Services are estimates only and are calculated from the date the Customer's order is accepted by the Supplier and the Customer provides to the Supplier all information required by the Supplier to commence work to fill the order.
- (c) The Supplier shall not be liable for any loss, injury, damage or expense suffered by a Customer by reason of a delay, suspension or cancellation of any orders in part or in whole for any reason beyond the control of the Supplier, breakage or failure of any machinery or apparatus required to deliver the Goods or labour trouble, strikes, lockouts or injunctions.
- (d) Orders delayed, suspended or cancelled under this clause 11 may, at the option of the Supplier, be cancelled completely or delivered at a later time (without any liability attaching to the Supplier as a consequence) and, in either case, the Supplier shall notify the Customer in writing accordingly.
- (e) If, pursuant to the terms of the Contract, the Customer is obliged to arrange transport of all or some of the Goods, then the Supplier must notify the Customer of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

11.3 Projects

The parties acknowledge that for the provision of the Goods and/or Services one or more of the following may be necessary:

- (a) The operation of the object and any machinery part or device whatsoever connected to or in relation to the object.
- (b) The movement of the object by whatever means necessary whether on land and or on water and in whatever circumstances considered necessary and appropriate by the Supplier.
- (c) The carrying out of any rectification, alteration, adjustment, repair or installation as is in the Supplier's opinion necessary to give effect to the Customer's instruction.
- (d) Hiring, renting or leasing of suitable apparatus and or premises including hard stand from third party.
- (e) The obtaining of government statutory licences or approvals and/or compliance with a number or statutory and regulatory requirements.

The Customer agrees to and authorises the Supplier to:

- (a) Take all action reasonably necessary to provide the Services and or supply any machinery, parts and or devices etc;
- (b) Operate its machinery, parts, devices and/or the object whatsoever;
- (c) Move any object by what ever means necessary whether on land or on water and in whatever circumstances as the Supplier considers necessary and appropriate; and
- (d) Carry out any rectification, alteration, adjustment, repair or installation as is in the

Supplier's opinion necessary to give effect to the Customer's instructions.

11.4 Workplace Health & Safety

- (a) The Customer shall comply with and ensure that it and its employees, servants or agents comply with the Workplace Health and Safety Act or equivalent legislation whilst the Supplier is performing the Works and indemnifies the Supplier against any liability or responsibility in respect of any failure by the Customer or its employees, servants or agents to comply.

11.5 Hire, Lease or Licence

- (a) Unless otherwise agreed in writing, the Customer shall arrange for the necessary hire, lease or licensing of equipment and/or premises to enable the Supplier to provide the Services or Parts.
- (b) The Customer shall arrange for the Supplier to have all necessary access during working hours in order to carry out the Works.

11.6 Environmental Issues

- (a) The Customer shall ensure that it and or any other relevant person shall apply for and obtain and maintain all approvals, permits, licences and authorisations which may be necessary under the Environmental Protection Act Queensland 1994 and/or any other Environmental Legislation ("The Act") for and in relation to the exercise of its rights and obligations under this agreement and to comply with all duties under the Act.

11.7 Subcontract

The Supplier shall be entitled to subcontract on any terms the whole or any part of the order for the supply of Parts and/or Services.

12. Title and Risk

12.1 Title

- (a) Full unencumbered title to each of the Goods will pass to the Customer upon the Customer making payment in full to the Supplier for each of the Goods.
- (b) Until payment in full has been made to the Supplier, the Customer acknowledges and agrees that:
 - (i) it holds the Goods as a fiduciary and Bailee agent for the Supplier;
 - (ii) it will maintain the Goods in good order and condition;
 - (iii) it will store, at all times, the Goods separately from its or any third party's goods so that they remain identifiable as the property of the Supplier;
 - (iv) it will not encumber or allow any charge or security interest over the Goods except as provided in these terms and conditions;
 - (v) (where the Goods have become incorporated into other chattels), pass title to the chattels to the

- (v) Supplier and hold any such chattels as bailee;
- (vi) in the event the Goods or any chattels referred to in clause 12.1(b)(v) are sold, hold the proceeds of sale for the Supplier as its property; and
- (vii) upon written demand, redeliver the Goods or materials to the Supplier or allow the Supplier by its servants or agents to enter upon any premises where the Goods are stored to recover the same.
- (c) For the sake of clarity, title will pass for each individual Good at the relevant time.

12.2 Risk

Notwithstanding that the title to the Goods may not have passed, risk in each of the Goods shall pass from the Supplier to the Customer upon:

- (a) if the Goods are to be delivered personally by the Supplier, its delivery to the address provided by the Customer; or
- (b) if the Goods are to be delivered by a third party, the despatch of the Goods by the Supplier to the third party.

12.3 Insurance

Insurance will not be held by the Supplier on Goods forwarded from the Supplier's premises to the Customer unless the Supplier receives a written request from the Customer to insure the Goods.

13. Cancellations and Returns

- (a) Any request by the Customer for cancellation of an order for Goods and/or Services must be made in writing and shall not be binding on the Supplier unless and until the request for cancellation is accepted by the Supplier in writing.
- (b) Consent to a request for cancellation of any order for Goods and/or Services shall be at the sole and absolute discretion of the Supplier.
- (c) Cancellation of orders for Goods made to the Customer's specifications will not be accepted once production has commenced, or an order has been placed.

14. Force Majeure

14.1 Notice of Force Majeure

The Supplier will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Supplier to perform any of its obligations under the Contract, it gives a notice to the Customer that complies with clause 14.2.

14.2 Force Majeure notice

A notice given under clause 14.1 must:

- (a) specify the obligations the Supplier cannot perform;
- (b) fully describe the Force Majeure;

- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

14.3 Obligation to remedy and mitigate

The Supplier must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the Customer as a result of its failure to carry out its obligations under the Contract.

15. Contract

15.1 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in the definition of Contract.

15.2 Entire agreement

- (a) The Contract contains the entire agreement between the Customer and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Customer and the Supplier in this regard, unless those communications expressly form part of the Contract.
- (b) No terms or conditions submitted by the Customer that are in addition to, different from or inconsistent with those contained herein, including, without limitation, the Customer's printed terms and conditions and any terms and conditions contained in any Customer's order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon the Supplier unless specifically and expressly agreed to in writing and signed by a duly authorised representative of the Supplier.

15.3 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Supplier and the Customer, as the case may be.

16. Default

16.1 Default Notice

If either party breaches any term of the Contract, the innocent party may serve a notice of default (**Default Notice**) on the defaulting party containing the information specified in clause 16.2.

16.2 Default Notice requirements

A Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days (or a shorter period if justifiable) after service of the Default Notice on the defaulting party or state that the breach is incapable of remedy; and

- (b) state that if the breach is not remedied within the period specified in the Default Notice or is incapable of remedy, then the innocent party may by further notice to the defaulting party do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied;
 - (ii) take such action as necessary to cure the breach (the cost of such action so taken being recoverable from the defaulting party as a debt due);
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**); or
 - (iv) take such other or additional action available at law.

16.3 Obligations upon termination

If an innocent party gives notice pursuant to clause 16.2(b)(iii), the Contract is terminated from the Cancellation Date and the defaulting party must:

- (a) if applicable, cease supply of the Services in accordance with, but only to the extent specified in, the Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all the Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (d) take any other action reasonably required in relation to the termination.

16.4 No prejudice

Notwithstanding the terms of any Default Notice, no action taken by the Customer under this clause 16 will prejudice the existence of any of its rights and remedies under the Contract which the innocent party may have at law as a result of the relevant breach.

16.5 Overdue Invoices

- (a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the default judgment rate applicable under the *Uniform Civil Procedure Rules 1999* (Qld).
- (b) If the Customer owes the Supplier any money, the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs, collection agency costs and bank dishonour fees).

17. Dispute Resolution

17.1 Dispute

In the event of any dispute between the parties in respect of the Goods, Services and/or the terms and conditions of the Contract (the **Dispute**), a Party must give to the other Party a Dispute Notice specifying the Dispute and requiring its resolution under this clause 17.

17.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

17.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

17.4 Urgent interlocutory relief

Nothing in this clause 17 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

18. Intellectual Property

- (a) Where the Supplier has designed, drawn or developed Goods and/or Documentation for the Customer under the Contract and/or in provision of the Services, then the Intellectual Property Rights in those Goods and/or Documentation shall remain the property of the Supplier.
- (b) The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- (c) The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation or Goods which the Supplier has created for the Customer.

19. Confidentiality

19.1 Obligation of confidentiality

The Parties undertake to each other and agree:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Services; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the supply of the Services,

unless the prior written consent of the other Party to do so has been obtained.

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- 19.2 Exceptions**
- Clause 19.1 does not apply to:
- (a) information after it becomes generally available to the public other than as a result of the breach of this clause 19 or any other obligations of confidence imposed on the Parties; or
 - (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange.

19.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to clause 19.1 will be deemed to be a breach of the Contract.

19.4 Indemnity

Without limiting clause 8, each Party indemnifies the other, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this clause 19 by that Party or its Personnel.

19.5 Additional obligations

The obligations in this clause 19 are in addition to and do not diminish the obligations of the Parties in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

19.6 Return of Confidential Information

If requested by a Party, whether prior to or after the expiry or earlier termination of the Contract, the other Party must promptly deliver all Confidential Information in their custody, possession or control.

19.7 Survival of clause

This clause 19 will survive the termination of the Contract.

20. Notices

20.1 Form of Notices

Any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract:

- (a) must be in writing;
- (b) must, where given by a Party, be signed or authorised by a Representative; and
- (c) may be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

20.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct

destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4:00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

21. Waiver

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

22. Further Assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

23. Severability

23.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

23.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

24. Assignment

The Customer may not assign any or its rights or obligations under any Contract without the Supplier's prior written consent, which may be given or refused in the Supplier's absolute discretion.

25. Governing Law

The Contract is governed by the laws of Queensland, Australia. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in Queensland, Australia in connection with matters concerning the Contract.

26. Definitions and Interpretation

26.1 Definitions

In these terms and conditions, the following terms have the meanings set out below:

Confidential Information means the Contract and any information (in whatever form) or Documentation of a confidential nature (or which the Supplier or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Customer or an End User (including in relation to the Services) and which:

- (a) is disclosed to the Customer or its Personnel by or on behalf of the Supplier;

- (b) is generated by the Customer or its Personnel in supplying the Services; or
- (c) otherwise comes to the knowledge of the Customer or its Personnel.

Contract means the following documents:

- (a) these terms and conditions of sale;
- (b) Quotation; and
- (c) any special conditions and attachments.

Contract Price means the price agreed between the Customer and the Supplier for the Goods and/or Services to be received in accordance with the Contract.

Customer means the customer named in the Quotation.

Documentation includes plans, designs, drawings, calculations, engineering information, data, Specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

End User means an entity identified in the Contract (or notified to the Supplier by the Customer) to whom the Supplier provides goods and/or services comprising or derived from, in whole or in part, the Services.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

Goods means the Goods and/or Services identified in the Quotation that are to be supplied by the Supplier (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

Intellectual Property Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Liabilities means damages, claims (any action, suit, proceeding or demand of any kind), losses, liabilities, costs and expenses of any kind.

Quotation means an individual quotation issued by the Supplier to the Customer in respect of the supply of Services or the provision of Goods which shall be subject to the terms of the Contract.

Related Body Corporate has the meaning given in the *Corporations Act*.

Services means the work identified in the Quotation to be supplied by the Supplier (and includes any supply of

any incidental goods not specified but otherwise required in accordance with the Contract).

Supplier means Bob's Irrigation Services (ABN 89 317 422 544) or the Party (as identified in the Quotation) and any Related Body Corporate.

26.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by "including" or "for example".
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes all of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to "use", in the context of dealing with Intellectual Property Rights, includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- (i) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.