

Terms and Conditions of Trade

1. ACCEPTANCE

- 1.1 These Terms and Conditions of Trade (**Terms**) are between True Blue Line Boring Pty Ltd (ABN 87 128 188 385), its successors and assignees (referred to as “**we**”, “**us**” and “**our**”) and you, the person, organisation or entity described in the Estimate and/or Quote (referred to as “**you**” and “**your**”), each a “**Party**” and collectively the “**Parties**”. These Terms apply to all Services provided by us to you.
- 1.2 You have requested the Services set out in the Estimate and/or Quote. You accept the Estimate and/or Quote and these Terms by the earlier of:
- confirming by email that you accept the Estimate and/or Quote;
 - instructing us in writing to proceed with the Services;
 - paying the Deposit set out in the Estimate and/or Quote (if applicable); or
 - making part or full payment for the Services.
- 1.3 **You agree that the Estimate and/or Quote and these Terms form the entire agreement under which we will supply Services to you. Please read the Estimate and/or Quote and these Terms carefully.** Please contact us if you have any questions using the contact details in the Estimate and/or Quote. Purchasing Services from us indicates that you have had sufficient opportunity to read the Estimate and/or Quote and these Terms and contact us if needed, and that you have read, accepted and will comply with these Terms.
- 1.4 We are not obliged to commence performing the Services until you have paid the Deposit or first instalment of our Fees, where indicated in the Estimate and/or Quote as applying.

2. SERVICES

- 2.1 We reserve the right to refuse any request that we deem inappropriate, unreasonable, unsafe or illegal.
- 2.2 The Estimated Period for us to perform the Services is set out in the Estimate and/or Quote. You acknowledge and agree that the Estimated Period is an estimate and that, while we will use our best endeavours to perform the Services within the Estimated Period, we will not be liable for any failure to complete the Services within the Estimated Period.
- 2.3 We may provide the Services to you using third parties, and they are listed in the Estimate.
- 2.4 Third parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by any third party, whether

listed in the Estimate and/or Quote or otherwise.

- 2.5 If you request a Variation, we have discretion as to whether we accept it and whether an adjustment to the Fees may be required. If we are unable to accommodate the Variation, we may terminate these Terms, and will be entitled to full payment of the Price, including any Expenses incurred up to and including the date of termination, and to retain the Deposit (if applicable).
- 2.6 If we agree to perform a Variation, we will inform you of any Variation Fee. You must pay the Variation Fee before we commence the Variation. We will invoice you accordingly for the Variation.
- 3. PRICE, INVOICING AND PAYMENT**
- 3.1 You agree to pay us the Price, using the Payment Method, as set out in the Estimate and/or Quote, including any Deposit (if applicable). All amounts are stated in Australian dollars. All amounts include or exclude Australian GST where applicable or where indicated in the Estimate and/or Quote.
- 3.2 The Price and Services can be varied by written agreement between us, including by email.
- 3.3 You agree to pay our invoices by the Payment Date or in accordance with our credit terms, if you are an approved credit customer. If an invoice remains unpaid after the Payment Date, we may cease to provide Services to you until we receive payment.
- 3.4 We may charge an administrative fee of \$15 and interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment day.
- 3.5 If invoices are unpaid after the Payment Date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 3.6 We reserve the right to report bad debts to independent credit data agencies.
- 3.7 If the Estimate and/or Quote states that the Fees and Expenses are an estimate only, you acknowledge that the final Fees and Expenses may be more or less than the estimated amounts. We will endeavour to inform you of any material variation to the Fees or Expenses as they become apparent.
- 3.8 The Estimate and/or Quote and these Terms (including our pricing structure, payment methods, the Price and the Estimated Period) may be amended from time to time at our discretion, on written notice to you. The changes will apply to you for Services provided

to you after the date of the change and in any event no earlier than the date that we notify you of the change, or if you enter into new Terms, whichever is earlier. After a change to the Estimate and/or Quote or these Terms which have a material adverse impact on you, you have the choice to continue using our Services or to terminate these Terms without penalty, provided that:

- (a) you pay us for all Services provided or Expenses incurred on or prior to the date of termination, including any Services which have been performed or Expenses that have been incurred and have not yet been invoiced to you; and
- (b) you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and/or Intellectual Property.

3.9 Where you have left items, plant, equipment or other property with us for us to perform Services on or in relation to, and you fail to pay us the Price by the due date, or if your payment is dishonoured, you acknowledge and agree that we will have:

- (a) a lien over the item;
- (b) the right to retain the item until all amounts due and owing to us under these Terms are paid to us in cleared funds; and/or
- (c) the right to sell the item to recoup any amounts due and owing to us, in which case any proceeds of sale in excess of the amount due and payable to us will be paid to you into a bank account nominated by you.

4. ACCESS TO PREMISES

4.1 You agree to grant us (including our employees and contractors) the right to enter and remain on the sites, lands and premises at or on which the Services are to be performed.

4.2 If you do not own the sites, lands or premises at or on which the Services are to be performed, you warrant that you have obtained written permission from the relevant owner for us to enter and remain on the sites, lands and premises sufficient to enable us to perform the Services at all relevant times.

4.3 You must ensure that we (including our employees and contractors) have convenient and safe access to all parts of the sites, lands and premises and to all plant, equipment, machinery, utilities and services as required to enable us to provide the Services.

5. WORKPLACE HEALTH AND SAFETY

5.1 You (including your employees, contractors and agents) must comply with all applicable workplace health and safety laws, and must comply with any instructions reasonably issued by us in relation to the Services from time to time.

5.2 If you (including your employees, contractors and agents) engage in conduct on the sites, lands or premises where the Services are to be performed which, in our reasonable opinion, poses a risk to health or safety, we may cease performing the Services and/or leave the sites, lands and premises immediately.

6. YOUR OBLIGATIONS AND WARRANTIES

6.1 You warrant that you will not employ, canvass, solicit, entice, induce or attempt to employ any employee or contractor that was employed by or contracted to us during the time that we provided Services to you or during the 12 month period following that time.

6.2 You warrant that throughout the term of these Terms that:

- (a) there are no legal restrictions preventing you from agreeing to these Terms;
- (b) you will cooperate with us, and provide us with information (including engineering specifications, required parts lists, sizing of parts and acceptable tolerances) that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
- (c) you will follow our reasonable instructions;
- (d) if relevant, you have complied with all applicable Laws, awards and industrial instruments in engaging or employing all persons who will work with us in supplying Services to you;
- (e) you will comply with all Laws, including any relevant workplace health and safety laws;
- (f) you will promptly notify us of any workplace health and safety issues that may impact or affect your ability to comply with all Laws, including any relevant workplace health and safety laws, or our provision of Services;
- (g) the information you provide to us is true, correct and complete;
- (h) you will not infringe any third party rights in working with us and receiving the Services;
- (i) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
- (j) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to

be provided, at your cost, and for providing us with the necessary consents, licences and permissions;

- (k) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- (l) if applicable, you hold a valid ABN which has been advised to us;
- (m) if applicable, you are registered for GST purposes; and
- (n) you must comply with the Additional Client Obligations set out in the Estimate and/or Quote.

7. OUR INTELLECTUAL PROPERTY

- 7.1 The Materials contain material which is owned by or licensed to us and is protected by Law, including Australian and international laws. As between you and us, we own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 7.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials.
- 7.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 7.4 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as on-sale to third parties.
- 7.5 This clause will survive the termination of these Terms.

8. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

- 8.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:
- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
 - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 8.2 If you (or any of your employees or agents) have Moral Rights in any Intellectual Property that you provide to us, you:

- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
- (b) irrevocably consent to us using or applying the Intellectual Property for the purpose of providing Services to you without any attribution of authorship;
- (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
- (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statements.

- 8.3 This clause will survive the termination of these Terms.

9. CONFIDENTIAL INFORMATION

- 9.1 You (including your employees and contractors) agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use our Confidential Information solely for the purpose for which it was disclosed or provided by us to you.
- 9.2 These obligations do not apply to Confidential Information that:
- (a) is required to be disclosed for the purposes of these Terms or in performing the Services;
 - (b) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms; or
 - (c) must be disclosed by law or by a regulatory authority including under subpoena.
- 9.3 This clause will survive the termination of these Terms.

10. FEEDBACK AND DISPUTE RESOLUTION

- 10.1 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
 - (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation.

- The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 10.2 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 11. TERM AND TERMINATION**
- 11.1 These Terms will begin on the date specified in the Estimate and/or Quote and continue until the date on which these Terms are terminated in accordance with this clause, if earlier.
- 11.2 Either Party may terminate these Terms without cause by providing the other Party with notice, in writing. If:
- (a) we terminate these Terms under this clause 11.2, you agree that any Deposit (if applicable) or payments made are not refundable to you, and you are to promptly pay for all Services provided and any Expenses incurred on or prior to the date of termination, including any Services which have been performed and Expenses that have been incurred and have not yet been invoiced to you; and
- (b) if you terminate these Terms under this clause 11.2, you agree that any Deposit (if applicable) or payments made are not refundable to you, and you are to promptly pay the Price in full, including any Expenses incurred on or prior to the date of termination. For the avoidance of doubt, this includes payment for any Services which have been performed and Expenses that have been incurred and have not yet been invoiced to you.
- 11.3 We may terminate these Terms immediately, at our sole discretion, if:
- (a) you commit a non-remediable breach of these Terms;
- (b) you commit a remediable breach of these Terms and do not remedy the breach within 10 days after receiving notice of the breach;
- (c) you fail to provide or procure access to the sites, lands or premises at or on which the Services are to be performed;
- (d) you breach any of your workplace health and safety obligations in clause 5.2;
- (e) we consider, in our sole discretion, that a request for Services is inappropriate, unsafe, improper, unviable or unlawful;
- (f) you fail to provide us with clear or timely instructions or any other information necessary to enable us to provide the Services;
- (g) we consider that our working relationship has broken down, including a loss of confidence and trust;
- (h) for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or
- (i) an invoice is overdue and you fail to pay an invoice by the Payment Date.
- 11.4 On termination under clause 11.3, you agree that any Deposit (if applicable) or payments made are not refundable to you, and you are to promptly pay the Price in full, including any Expenses incurred on or prior to the date of termination. For the avoidance of doubt, this includes payment for any Services which have been performed and Expenses that have been incurred and have not yet been invoiced to you.
- 11.5 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and/or Intellectual Property.
- 11.6 On completion of the Services, we will retain your documents (including copies) as required by law. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with law, or on termination of these Terms.
- 11.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 12. LIMITATION OF LIABILITY AND DISCLAIMERS**
- 12.1 **Third Parties:** We may provide you with the contact details of third party specialists or goods or services providers, whether set out in the Estimate and/or Quote or otherwise. This is not a recommendation by us for you to seek their advice or to use their goods or services. We make no representation or warranty about the third party advice or their provision of goods or services, and we disclaim all responsibility and liability for the third party advice, goods or services, or their failure to advise or provide the goods or services.
- 12.2 **Warranties:** To the maximum extent permitted by law, we exclude all express and implied warranties, representations and guarantees in relation to the Services, and all material and work is provided to you without warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 12.3 **Exclusions:** To the maximum extent permitted by law, we exclude all liability, and will have no liability, for:

- (a) the Services being unavailable or the Services or Materials not meeting your expectations;
- (b) the Services, where that liability is caused or contributed to by you (or any of your employees' or agents') acts or omissions, including a failure to provide information or instructions necessary for us to perform the Services;
- (c) without limiting any other clause in these Terms, any delays in providing the Services where those delays are caused or contributed to by events or circumstances outside of our control; and
- (d) any Claims (whether direct, indirect, incidental, special, consequential and/or incidental) for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with the Services and/or Materials, the failure to provide the Services or the late supply of the Services, even if we were expressly advised of the likelihood of such loss or damage.
- 12.4 **Limitation:** To the maximum extent permitted by law, our total liability arising out of or in connection with the Services and/or the Materials, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our sole and unfettered discretion, to us refunding to you the amount you have paid us for the Services to which your claim relates.
- 12.5 This clause will survive the termination of these Terms.
- 13. INDEMNITY**
- 13.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) your breach of these Terms;
- (c) any misuse of the Services by you, your employees, contractors or agents; and
- (d) your breach of any Law or third party rights.
- 13.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arises as a result of your use of the Services including, but not limited to, disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 13.3 This clause will survive the termination of these Terms.
- 14. Personal Property Securities Register (PPSR)**
- 14.1 The Parties are aware that we may, in our absolute discretion, register any security interest created under these Terms on the PPSR.
- 14.2 If we elect to effect such registration, all fees payable for the use of the PPSR, including registration and discharge fees, shall be reimbursed by you to us. A tax invoice will be provided by us accordingly.
- 14.3 If, for any reason:
- (a) due to any or your acts or omissions; or
- (b) you become insolvent or go into liquidation, or have a receiver, administrator or manager appointed; or
- (c) whilst any of our plant and/or equipment remain or is intended to remain under your care and control pursuant to these Terms, our rights to or our ownership of the plant and/or equipment is or are prejudiced or will be lost, whether by loss of priority under the PPSR or otherwise, then it is expressly agreed that:
- (d) these Terms are and shall be deemed to have been terminated by mutual agreement on the Business Day immediately preceding the event or occurrence which would otherwise have effected our loss of rights or ownership of the plant and/or equipment;
- (e) the plant and/or equipment shall be and shall be deemed to have been surrendered by you to us on such date of termination;
- (f) if still in possession of the plant and/or equipment, from such date of termination, you will hold the plant and/or equipment as a bare bailee only; and
- (g) as a principal consequence of the above, you shall be liable under these Terms for all matters occurring up to and including such date of termination, and shall be liable as a bare bailee of the plant and/or equipment from such date of termination until we repossesses or are in possession of the plant and/or equipment.
- 15. GENERAL**
- 15.1 **Good faith:** You agree at all times to act in good faith when dealing with us under these Terms.
- 15.2 **Privacy:** The Parties agree to comply with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

- 15.3 **Compliance with Law:** You agree to comply with all applicable Laws.
- 15.4 **Publicity:** You consent to us advertising or publicly announcing that we have provided Services to you, including but not limited to mentioning you on our website and in our promotional material.
- 15.5 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any Claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 15.6 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out in our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 15.7 **Relationship of Parties:** These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- 15.8 **Assignment:** These Terms are personal as to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 15.9 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 15.10 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate these Terms with you by giving you 5 Business Days' notice in writing.
- 15.11 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Estimate and/or Quote. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 15.12 **Jurisdiction & Applicable Law:** These Terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.
- 15.13 **Entire Agreement:** The Estimate and/or Quote and these Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 16. DEFINITIONS**
- 16.1 **Additional Client Obligations** are set out in the Estimate and/or Quote.
- 16.2 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Queensland, Australia.
- 16.3 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a Party to these Terms or otherwise.
- 16.4 **Confidential Information** includes confidential information about either Party, their credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 16.5 **Deposit** is set out in the Estimate and/or Quote.
- 16.6 **Estimate** means the estimate provided to you by us in relation to the provision of the Services.
- 16.7 **Estimated Period** is set out in the Estimate and/or Quote.
- 16.8 **Expenses** are set out in the Estimate and/or Quote.
- 16.9 **Fees** are set out in the Estimate and/or Quote.
- 16.10 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

- 16.11 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 16.12 **Invoice Terms** is set out in the Estimate and/or Quote.
- 16.13 **Law** means any relevant law, legislation, ordinance, regulation, by-law, subordinate legislation, standard and code, and any approval, licence or consent issued by a government department or statutory authority in any relevant jurisdiction, and including any renewal of, or variation to, any of them (and including any fee, rate, tax, levy and charges payable in respect of any of them).
- 16.14 **Materials** means work and materials that we provide to you in carrying out the Services.
- 16.15 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 16.16 **Payment Date** means the date for payment, being 14 calendar days after the date of the invoice.
- 16.17 **Payment Method** is set out in the Estimate and/or Quote.
- 16.18 **Price** means the Fees and Expenses for the Services that you have requested.
- 16.19 **Quote** means the quote provided to you by us in relation to the provision of the Services.
- 16.20 **Services** is set out in the Estimate and/or Quote.
- 16.21 **Terms** means these terms and conditions.
- 16.22 **Variation** means any amendment to the Services in accordance with these Terms.
- 16.23 **Variation Fee** means the additional cost for a Variation.