



## 1. Form of Contract

- 1.1. This Contract will be comprised of the Service Sheet, corresponding invoice and these Terms and Conditions.

## 2. Definitions and Interpretations

### 2.1. **Definitions:**

**Agreement** refers to this Contract and its Terms and Conditions, please see Contract and Terms and Conditions in section 2.2.1

**Claim/s** includes any claim, including a notice, demand, debt, account, action, expense, damage, Loss, cost, lien, liability, proceeding, litigation (including legal costs), investigation or judgement of any nature, whether known or unknown.

**Client** refers to the individual and/or organisation, including contractors, sub-contractors, employees, employers or affiliates of any kind associated with the Client.

**Contract** refers to the Terms and Conditions set out in this document, please see Terms and Conditions in section 2.2.1

**Intellectual Property Rights (IPR)** means all property in and rights under patents, designs, inventions, copyright, moral rights, database rights, layouts, conceptual solutions, images and any other form of intellectual property and includes any additional intellectual property rights defined in this Contract.

**Loss** means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.

**section/s** refers to the collection of separate clauses, which in their entirety, constitute the Terms and Conditions.

**Representative/s** refers to a PLD employee, manager, partner or affiliate.

**Services** refers to the services offered by Pine Lime Designs through the usual day to day operations including but not limited to underground detection of utilities or as is agreed upon from time to time.

**Service Sheet** refers to the document that is provided to the Client after a PLD representative has either visited a site or supplied Services that details the nature of the visit and/or Services supplied.

**Parties** is a reference to both PLD and the Client.

**PLD** refers to the abbreviation of Pine Lime Designs.

**Terms and Conditions** refers to all parts and sections as set out in this Terms and Conditions document including the terms and conditions as set out in the Service Sheet.

**Utility Provider/s** refers to any provider of underground or overhead infrastructure or utilities as set out in clause 4.6

**Qualification/s** refers to the any qualification, pre-requisite, requirement, policy or mandate presented by the Client.

## 3. General

- 3.1. The Parties acknowledge that this Contract constitutes in its entirety including in separate parts or sections the Terms and Conditions that are applicable and agreed to by both PLD and the Client in relation to the supply of Services. This Contract supersedes any other agreement, contract or terms and conditions that may have been presented and/or agreed to prior to the on-site engagement of a PLD representative and/or Service. No other terms and conditions of agreement have any effect insofar as this Contract is concerned and may not be imported or implied into this Contract.
- 3.2. The Client at all times will remain independent of PLD for the purposes of receiving Services and/or Services related information.
- 3.3. PLD agrees to supply the Services to the Client pursuant to the terms of this Contract with the terms contained in our Service Sheet forming part of the Contract.
- 3.4. PLD will endeavour to take reasonable commercial steps to protect all personal information provided by you.
- 3.5. PLD agrees to consider any reasonable health, safety, financial and environmental Qualification as indicated by the Client but reserves the right to decline any Qualification deemed by PLD to be unreasonable without penalty to PLD including any obligation and/or liability for any fees, compensation, Claims or damages as a result of declination.
- 3.6. This Contract is governed by and is to be construed in accordance with the laws applicable from time to time in the State of South Australia
- 3.7. If any provision of this agreement is illegal or unenforceable in any relevant jurisdiction it must be enforced to the maximum extent possible, and if unenforceable may be severed for the

purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these Terms and Conditions.

## 4. **Contract**

- 4.1. The Contract between the Parties will come into being in one of three ways:
  - 4.1.a) when the Client signs our Service Sheet, both Parties enter this legally binding Contract on the date the Client signs, beginning at 12.01am.
  - 4.1.b) where a PLD representative visits the Client work site and/or supplies Services to the Client, then there will be a legally binding contract on the date of arrival, beginning at 12.01am, which incorporates PLD's Terms and Conditions.
  - 4.1.c) Subject to clause 4.1.a or 4.1.b, where the Parties agree verbally that PLD should provide the Services, then there will be a legally binding contract on the date of our verbal agreement, beginning at 12.01am, which incorporates PLD's Terms and Conditions.
- 4.2. We suggest that before the Client signs PLD's Service Sheet, directly engages our Services or verbally agrees to PLD providing Services that the Client read through these Terms and Conditions.
- 4.3. The Client should keep a copy of these Terms and Conditions for their records.
- 4.4. Once the Parties have entered into a legally binding contract, we will normally start providing the Services to you immediately or on a date agreed upon without further discussion with the Client. Occasionally the Services will be provided at some other date or time dependent on a number of factors.
- 4.5. In protecting PLD interests, PLD reserves the right to refuse the provision of confidential financial information unless specifically deemed necessary by a government or other legal authority and only upon request.
- 4.6. The Client acknowledges that the primary role of PLD Services is to, where possible, protect underground and overhead infrastructure and utilities including but not limited to pipes, cables, tanks or any other sub surface structures; with the addressing of Client needs being secondary to this primary role.
- 4.7. The Client acknowledges that if their works are to be within immediate proximity to underground infrastructure and/or utilities, as indicated by the Utility Provider's Duty of Care documentation, then the Client must pothole by hand digging or soft excavation techniques such as hydro jet vacuuming to expose and identify the type and alignment of the utility prior to commencing any

further works.

- 4.8. The Client acknowledges that any mapping, mud maps, drawings, photos, images or other IPR supplied by PLD as part of the Services is indicative only, not to scale and not to be relied upon for accurate alignments.
  - 4.9. The Client acknowledges that any depths or depthing undertaken as part of the Services provided by PLD are only indicative and need to be potholed by the Client for confirmation.
- ## 5. **Price, Cost and Payments**
- 5.1. PLD charge for our Services on an hourly basis. Our hourly rates, excluding GST, for performing the Services are variable dependant on the services requested by the Client.
  - 5.2. All amounts stated (whether verbally or in writing) are exclusive of GST.
  - 5.3. PLD estimates/quotes may be charged higher than stated when issued for a number of reasons:
    - 5.3.a) where there has been a variation, change or the amount of work increases or is different to what was agreed upon prior to performing the Services
    - 5.3.b) where Services have been initiated and it becomes apparent that the amount of Services or work is different to what was originally agreed upon prior to initiating works which could not be reasonably foreseen prior to initiating Services.
  - 5.4. Where the amount of work involved is greater than that stated in PLD's initial estimate or quote then the following applies:
    - 5.4.a) if the amount of additional time needed to complete the performance of Services does not exceed 25% of the initial amount stated in the estimate or quote then PLD will proceed to complete the provision of Services, however the Client will be advised of the additional expenses at the time of invoicing.
    - 5.4.b) where the additional time required to complete Services will exceed 25% of the initial estimate or quote, PLD will halt Service provision and seek approval from the Client in order to proceed.
  - 5.5. Payment for PLD's Services is to be made 28 days after receiving a tax invoice from PLD, unless otherwise agreed upon by both Parties.
  - 5.6. If the Client fails to make payment within 14 days of receiving the tax invoice or as otherwise agreed upon by both Parties, then PLD reserves the right to:
    - 5.6.a) Charge interest on the outstanding amount at the rate of 2% above the base lending rate of Bank Australia, accruing daily, until payment has been made, whereby the Client will be issued a tax invoice for the

- remaining late fee.
- 5.7. The Client may not refuse to pay any amount owing to PLD where there is only a minor or inconsequential defect or error in the performance of the Services.
- 5.8. Any cancellation or postponing of Services by the Client within two working days prior to the agreed upon booking date will, at the discretion of PLD, incur a minimum hourly charge fee at the rate stipulated within the most recent PLD pricing schedule.
- 6. Intellectual Property**
- 6.1. PLD retains any IPR created by PLD prior to this Contract, independently of the performance of the Services.
- 6.2. The Client retains any IPR created by the Client prior to this Contract, independently of the performance of the Services.
- 6.3. All IPR created under this Contract by PLD for the Client vests in PLD.
- 6.4. PLD grants the Client a temporary licence to PLD IPR created under this Contract to enable the Client to fulfil its work requirements for which PLD Services were engaged. Once the Client's work requirements have been concluded or after a period of (12) months the temporary IPR licence will end.
- 7. Termination and Suspension**
- 7.1. PLD may at any time by verbal or written notice to the Client suspend the Services for any reason, including where PLD forms the view, acting reasonably, that the Services need to be suspended due to health, safety and/or environmental concerns.
- 7.2. PLD may by written notice served on the Client immediately terminate the Contract:
- 7.2.a) if the Client undergoes a change of control, ownership or management and PLD has not provided its prior written consent to this Contract continuing after the change (which consent will not be unreasonably withheld);
- 7.2.b) If the Client is in Breach of this Contract and the breach has not been remedied within (7) days of the serving of a notice by PLD on the Client requiring the breach to be remedied, or by a date reasonably agreed by PLD;
- 7.2.c) Where the Client is unable to meet its debts as and when they fall due, is bankrupt, goes into liquidation or receivership or becomes insolvent.
- 7.3. Upon termination or suspension of PLD Services the Client will be required to make payment on any sums, monies or remuneration owing for works completed up until and including the date of termination or suspension.
- 7.4. Clauses 3, 4, 5, 6 and 8, including sub-clauses, of this Contract and any indemnities or outstanding payments to PLD contained herein survive termination or expiration of this Contract.
- 8. Limitation of Liability and Indemnity**
- 8.1. PLD endeavours to provide you with information that is accurate and reliable.
- 8.2. The Client acknowledges that PLD may receive information from third party service providers and PLD makes no warranties as to the completeness or precision of that information.
- 8.3. The Client acknowledges that PLD cannot and does not purport to provide you with information that is complete, exact or precise, and recommends that on receipt of the Services you act with care and caution as per the duty of care documentation of the Utility Providers' and this Contract.
- 8.4. PLD provides Services to Australian Standards AS 5488, Classification of Subsurface Utility Information (or its replacement from time to time).
- 8.5. PLD gives no other express or implied warranties or representations under this agreement in relation to the Services.
- 8.6. The Services are provided to the Client only and are not to be relied upon by any third party.
- 8.7. Subject to clause 8.10, PLD is not liable for any Claim, Loss, expense, costs, demands, damages and/or suits arising from the performance or non-performance of the Services either directly or indirectly in connection with this Contract. This clause 8.7, extends to any PLD employees, contractors, agents, representatives, licensees or permitted assigns.
- 8.8. The Client agrees to indemnify and hold PLD harmless to the full extent permitted by law for any Loss or Claim whatsoever arising in connection with the supply of Services to the Client.
- 8.9. As per clauses 8.7 and 8.8 Where the Client has requested PLD to mark out sites for excavation works, including drilling and/or boring, as part of Services provided then this has been performed at the direction of the Client and as a result of the Clients scope of works. PLD takes no responsibility for any damages, whether major or minor, resulting from the Client's excavation works as per clause 8.7 and 8.8.
- 8.10. The limitation of liability set out in clause 8.7 will not apply to any liability arising as a result of or in connection with fraud or wilful misconduct.
- 8.11. To the maximum extent permitted by law PLD limits its liability for any Loss or Claim in connection with this Contract to the following,



which are to be determined at the sole discretion of PLD:

- 8.11.a) price of the Services; or
  - 8.11.b) the supplying of the Services again; or
  - 8.11.c) the payment of the cost of having the Services supplied again by an alternative supplier.
- 8.12. The Client agrees to indemnify PLD against any and all liabilities, Loss, expenses, costs and Claims of any kind suffered by us or our employees arising out of:
- 8.12.a) any incomplete information provided by the Client to PLD or the failure to provide information to PLD; and/or
  - 8.12.b) any failure by the Client to use or correctly or accurately interpret information supplied to the Client.