

Tricoast Holdings Pty Ltd T/A Tricoast Civil – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Tricoast" shall mean Tricoast Holdings Pty Ltd T/A Tricoast Civil its successors and assigns or any person acting on behalf of and with the authority of Tricoast Holdings Pty Ltd T/A Tricoast Civil.</p> <p>1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or order provided by Tricoast to the Client.</p> <p>1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.</p> <p>1.4 "Equipment" shall mean all Equipment including any accessories supplied on hire by Tricoast to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Tricoast to the Client.</p> <p>1.5 "Goods" shall mean all Goods supplied by Tricoast to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Tricoast to the Client.</p> <p>1.6 "Services" shall mean all Services supplied by Tricoast to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.7 "Price" shall mean the price payable for the Goods as agreed between Tricoast and the Client in accordance with clause 4 of this contract.</p> <p>2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA") and application of these terms and conditions to consumers</p> <p>2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.</p> <p>2.2 Clause 10 (Defects), and clause 11 (Warranty) may NOT apply to the Client where the Client is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily used for personal, domestic or household use or consumption, or where the Client is in any other way a consumer within the meaning of the TPA or the FTA of the relevant state or territories of Australia.</p> <p>3. Acceptance</p> <p>3.1 Any instructions received by Tricoast from the Client for the supply of Goods shall include any provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.</p> <p>3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.</p> <p>3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Tricoast.</p> <p>3.4 The Client shall give Tricoast not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Tricoast as a result of the Client's failure to comply with this clause.</p> <p>3.5 Goods are supplied by Tricoast only on the terms and conditions of trade herein to the Client and to any third party, and to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.</p> <p>4. Price And Payment</p> <p>4.1 At Tricoast's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by Tricoast to the Client in respect of Goods supplied; or</p> <p>(b) Tricoast's quote (Price (subject to clause 4.2) which shall be binding upon Tricoast provided that the Client shall accept Tricoast's quotation in writing within sixty (60) days.</p> <p>4.2 Tricoast reserves the right to change the Price in the event of a variation to Tricoast's quotation. Any variation from the plan of scheduled works or specifications (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 increased costs of materials, domestic or household use or charged for on the basis of Tricoast's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.</p> <p>4.3 Tricoast may submit a detailed payment claim at intervals not less than monthly for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of any work done in excess of the quotation.</p> <p>4.4 At Tricoast's sole discretion a non-refundable deposit may be required.</p> <p>4.5 At Tricoast's sole discretion:</p> <p>(a) payment shall be due on delivery of the Goods; or</p> <p>(b) payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; or</p> <p>(c) payment for unapproved Clients shall be due thirty (30) days following the date of the invoice.</p> <p>4.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.</p> <p>4.7 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Tricoast reserves the right to treat retentions as payment against the Client's account in default.</p> <p>4.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and Tricoast.</p> <p>4.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>5. Delivery Of Goods</p> <p>5.1 At Tricoast's sole discretion delivery of the Goods shall take place when:</p> <p>(a) the Client takes possession of the Goods at Tricoast's address; or</p> <p>(b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Tricoast or Tricoast's nominated carrier).</p> <p>5.2 At Tricoast's sole discretion the costs of delivery are included in the Price.</p> <p>5.3 The fact of Tricoast to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>5.4 Tricoast shall not be liable for any loss or damage whatsoever due to failure by Tricoast to deliver the Goods (or any of them) promptly or at all where due to circumstances beyond the control of Tricoast.</p> <p>6. Risk</p> <p>6.1 If Tricoast retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.</p> <p>6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Tricoast is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Tricoast is sufficient evidence of Tricoast's rights to receive the insurance proceeds without the need for any person dealing with Tricoast to make further enquiries.</p> <p>6.3 Where the Client expressly requests Tricoast to leave Goods outside Tricoast's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.</p> <p>7. Access</p> <p>7.1 The Client shall ensure that Tricoast has clear and free access to the work site at all times to enable them to undertake the works. Tricoast shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Tricoast.</p> <p>8. Underground Locations</p> <p>8.1 Prior to commencing any work the Client must advise Tricoast of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>8.2 Whilst Tricoast will take all care to avoid damage to any underground services the Client agrees to indemnify Tricoast in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.</p> <p>9. Title</p> <p>9.1 Tricoast and the Client agree that ownership of the Goods shall not pass until:</p>	<p>(a) the Client has paid Tricoast all amounts owing for the particular Goods; and</p> <p>(b) the Client has met all other obligations due by the Client to Tricoast in respect of all contracts between Tricoast and the Client.</p> <p>9.2 Receipt by Tricoast 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 assigned to any other person. Tricoast's ownership or rights in respect of the Goods shall continue.</p> <p>9.3 It is further agreed that:</p> <p>(a) where practicable the Goods shall be kept separate and identifiable until Tricoast shall have received payment and all other obligations of the Client are met; and</p> <p>(b) until such time as ownership of the Goods shall pass from Tricoast to the Client Tricoast may give notice in writing to the Client to return the Goods or any part of them to Tricoast. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and</p> <p>(c) Tricoast shall have the right of stopping the Goods in transit whether or not delivery has been made; and</p> <p>(d) if the Client fails to return the Goods to Tricoast then Tricoast or Tricoast's agent may enter upon and into the land and premises owned or occupied by or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and</p> <p>(e) the Client is only a bailee of the Goods and until such time as Tricoast has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Tricoast for the Goods, on trust for Tricoast;</p> <p>(f) the Client shall not deal with the money of Tricoast in any way which may be adverse to Tricoast; and</p> <p>(g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Tricoast; and</p> <p>(h) Tricoast can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and</p> <p>(i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Tricoast will be the owner of the end products.</p> <p>10. Defects</p> <p>10.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Tricoast of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Tricoast an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For the avoidance of doubt, Tricoast's liability is limited to either (at Tricoast's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.</p> <p>10.2 Goods will not be accepted for return other than in accordance with 10.1 above.</p> <p>11. Warranty</p> <p>11.1 Subject to the conditions of warranty set out in clause 11.2 Tricoast warrants that if any defect in any workmanship of Tricoast becomes apparent and is reported to Tricoast within twelve (12) months of the date of delivery of the Goods, Tricoast will either (at Tricoast's sole discretion) replace or remedy the workmanship.</p> <p>11.2 The conditions applicable to the warranty given by clause 11.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) failure on the part of the Client to properly maintain any Goods; or</p> <p>(ii) failure on the part of the Client to follow any instructions or instructions or directions provided by Tricoast; or</p> <p>(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or</p> <p>(iv) the continued use of any Goods after any defect becomes apparent or user; or</p> <p>(v) fair wear and tear, any accident or act of God.</p> <p>(b) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Tricoast's consent.</p> <p>(c) in respect of all claims Tricoast shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.</p> <p>11.3 For the avoidance of doubt, the warranty shall be the current warranty provided by the manufacturer of the Goods. Tricoast shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>12. Default & Consequences of Default</p> <p>12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due to the date of payment in full and a half (1/2%) per calendar month (and at Tricoast's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Tricoast.</p> <p>12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Tricoast against all costs and disbursements incurred by Tricoast in pursuing the debt including legal costs on a solicitor and own client basis and Tricoast's collection agency costs.</p> <p>12.4 Without prejudice to any other remedies Tricoast may have, if at any time the Client is in breach of any obligation (including those relating to payment), Tricoast may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Tricoast will not be liable to the Client for any loss or damage the Client suffers because Tricoast has exercised its rights under this clause.</p> <p>12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>12.6 Without prejudice to Tricoast's other remedies at law Tricoast shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Tricoast shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to Tricoast becomes overdue, or in Tricoast's opinion the Client will be unable to meet its payments as they fall due; or</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or poses or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>13. Security And Charge</p> <p>13.1 Despite anything to the contrary contained herein or any other rights which the Client may have in respect of the Goods, Tricoast shall have a security interest in the Goods and the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Tricoast or Tricoast's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Tricoast (or Tricoast's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should Tricoast elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Tricoast from and against all Tricoast's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Tricoast or Tricoast's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.</p>	<p>14. Dispute Resolution</p> <p>14.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p>15. Compliance with Laws</p> <p>15.1 The Client and Tricoast shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.</p> <p>15.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.</p> <p>15.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>16. Insurance</p> <p>16.1 Tricoast shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure that they are similarly insured.</p> <p>17. Cancellation</p> <p>17.1 Tricoast may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Tricoast shall repay to the Client any sums paid in respect of the Price. Tricoast shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>17.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Tricoast (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p>17.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.</p> <p>18. Privacy Act 1988</p> <p>18.1 The Client and/or the Guarantor agree for Tricoast to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Tricoast.</p> <p>18.2 The Client and/or the Guarantor/s agree that Tricoast may exchange information about the Client and the Guarantor/s with those credit providers (including but not limited to the credit agencies) named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) 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</p> <p>(d) to assess the credit worthiness of Client and/or Guarantor/s.</p> <p>18.3 The Client consents to Tricoast being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>18.4 The Client agrees that personal credit information provided may be used and retained by Tricoast for the following purposes and for other purposes as shall be agreed between the Client and Tricoast or required by law from time to time:</p> <p>(a) provision of Goods; and/or</p> <p>(b) marketing of Goods by Tricoast, its agents or distributors in relation to the Goods; and/or</p> <p>(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or</p> <p>(e) to assist in the operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.</p> <p>18.5 Tricoast may give information about the Client to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Client; and/or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.</p> <p>19. Construction Contracts Act 2004</p> <p>19.1 At Tricoast's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.</p> <p>19.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.</p> <p>20. Equipment Hire</p> <p>20.1 The Equipment shall at all times remain the property of Tricoast and is returnable on demand by Tricoast. In the event that the Equipment is not returned to Tricoast in the condition in which it was delivered Tricoast retains the right to charge the Price of repair or replacement of the Equipment.</p> <p>20.2 The Client shall:</p> <p>(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.</p> <p>(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any markings or signs on the Equipment or in the Equipment or in any other manner interfere with the Equipment.</p> <p>(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Tricoast to the Client.</p> <p>20.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Tricoast's interest in the Equipment and agrees to indemnify Tricoast against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>21. Wet Hire</p> <p>21.1 In the event of a "wet" hire of the Equipment the operator of the Equipment remains an employee of Tricoast and operates the Equipment in accordance with the Client's instructions. As such Tricoast shall not be liable for any actions of the operator in following the Client's instructions.</p> <p>22. General</p> <p>22.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.</p> <p>22.3 Tricoast shall be under no liability whatsoever to the Client for any indirect and/or consequential loss or expense (including loss of profits) suffered by the Client arising out of a breach by Tricoast of these terms and conditions.</p> <p>22.4 In the event of any breach of this contract by Tricoast the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.</p> <p>22.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed or to be owed to the Client by Tricoast nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>22.6 Tricoast may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>22.7 The Client agrees that Tricoast may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Tricoast notifies the Client of such change.</p> <p>22.8 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.</p> <p>22.9 The failure by Tricoast to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Tricoast's right to subsequently enforce that provision.</p>
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