

Terms of Trade

JAG Pumping Pty Ltd (ACN 144 540 250)

These Terms represent the agreement between JAG Pumping and you for the supply of goods and/or services.

1. Definitions

- (a) **Business Hours** means between 7.00am and 5.00pm on a day that is not a Saturday or Sunday, or a public holiday or bank holiday, in the Jurisdiction;
- (b) **Concrete** means concrete that you supply for us to place and install, from time to time;
- (c) **Customer, you, your, etc.** whether capitalised or not, means the Customer listed in the Customer Details Form, or the person or entity requesting Equipment and Services from us;
- (d) **Deposit** means any part of the Price that we require you to pay to us prior to the delivery of the Equipment or Services, as notified in writing (including in any Quote);
- (e) **Equipment** means any goods or items that we hire or lease to you, or that we supply, from time to time, as Ordered or accepted by you;
- (f) **First Up** means Services provided by us from 7:00am to 12:00pm;
- (g) **Interest Rate** means 12% per annum;
- (h) **JAG Pumping, JAG, us, we, our, etc.** whether capitalised or not, means JAG Pumping Pty Limited ACN 144 540 250;
- (i) **Jurisdiction** means New South Wales.
- (j) **Order** means a request for Concrete, Equipment and/or Services that you make to us, whether in writing, electronically, verbally, or otherwise and Ordered has the corresponding meaning;
- (k) **Overtime Rate** is the hourly rate set out for works performed after 3:00pm in the Price List.
- (l) **Price** means the Price(s) that we agree to place the Concrete, or supply Equipment and/or Services to you, as determined or amended by us from time to time in accordance with these T&Cs;
- (m) **Price List** means the price list accompanying these T&Cs and published on our website;
- (n) **Pump** is a reference to one of our concrete pumps, as identified in the Price List
- (o) **Quote** means any document we give you that specifies a particular Price or estimate of the Price at which we agree to supply Equipment to you;
- (p) **Second Up** means pumping works provided by us to you, after the completion of works at another site earlier that day, as advised by us to you prior to work commencing and will typically be work you have not booked to commence prior to 11:00am;
- (q) **Services** means any service we are to provide from time to time, including in relation to the placement of Concrete or supply of Equipment (e.g. delivery, testing) or the hire of one of our Pumps;
- (r) **Site** means any site you instruct us to perform the works at from time to time (and if more than one, all of those sites);
- (s) **SOPA** means the Building and Construction Industry Security of Payment Act, applicable to the state in which the works are to be performed;
- (t) **Surcharge Fees** means fees that we will charge for Equipment or Services that we are required to provide that are not strictly for the placement of Concrete or supply of Equipment (e.g. delivery fees, fees for opening our plant outside of ordinary hours, washout fees, etc), as we specify from time to time, whether on our website or otherwise – any schedule we provide specifying Surcharge Fees are not exhaustive lists of the additional fees, costs and expenses that we may charge you;
- (u) **Terms or T&Cs** means these Terms and Conditions, including all attachments and any amendment, variation or substitution thereof.

2. Application of T&Cs

- (a) These T&Cs operate to the exclusion of any terms or conditions proposed or put forward by the Customer.
- (b) We may, at any time, unilaterally amend these T&Cs. Any amended T&Cs will be notified to you, or posted on our website.
- (c) By making further Orders, you are deemed to agree to the latest version of these T&Cs current at the time of making such Order.

3. Pricing and Quotes

- (a) The Price List or Quote is an invitation to treat only (i.e. they invite you to make an Order on those terms), and not an offer by us.
- (b) The Price List may be amended at any time as we see fit, whatsoever. By making any Order, you will be deemed to accept any variations to the Price List that are current at the time you make such Order.
- (c) Any minimum charge out rates defined in Price List or Quote will be payable by you, irrespective of how long the work takes to complete.
- (d) If we give you a Quote for placing Concrete, or the supply of Equipment or Services:
 - (i) we may, at any time, prior to you accepting the Quote, withdraw, or otherwise amend the Quote; and
 - (ii) the Quote will automatically expire on the date stated in the Quote, or, if there is none stated, the date that is 30 days after the date the Quote is issued.
- (e) Unless expressly specified, any Prices stated in a Quote or document given by us is:
 - (i) based on us placing Concrete, or supplying Equipment or Services during our usual business hours;
 - (ii) will be at the rates specified in the Quote or Price List, which vary depending on whether the works are First Up or Second Up;
 - (iii) notwithstanding any other clause to the contrary in these T&C's, will incur an Overtime Rate for any works performed after 3:00pm; and
 - (iv) otherwise exclusive of any fees for any Equipment or Services not specifically included in such quote or document (e.g. any Surcharge Fees that may be applicable, such as delivery or testing).
- (f) If you are in breach or default of these T&Cs, we reserve the right to reverse, or cancel, any discount that we had applied in relation to placing Concrete, or supplying Equipment or Services.

4. Ordering

- (a) You may place an Order for Concrete, Equipment and/or Services with us at any time, in any method that we indicate we accept Orders, from time to time.
- (b) An Order placed by you will be either First Up or Second Up, as defined in these T&C's.
- (c) We will confirm your Order no less than 24 hours before the work is to be performed.
- (d) Nothing in these T&Cs constitutes any representation, warranty or guarantee that we will accept any Order, and we may accept or reject such Order, or impose any conditions on our acceptance of such Order (e.g. require a Deposit) at our absolute discretion.
- (e) A contract or agreement for the placement of Concrete, or the supply of Equipment and/or Services arises when you make an Order, and we give you confirmation that we accept that Order. The terms of these T&Cs are incorporated into each such contract or agreement.

- (f) Once we accept an Order, we will place the Concrete, or supply the Equipment and/or Services in accordance with these T&Cs.
- (g) If you cancel an Order on less than 3 Business Days' notice, you will be charged a cancellation fee. We reserve our right to cancel, at our sole discretion, the cancellation fee.
- (h) The price of our services will be subject to change, in the event that you change the terms of your Order. For any Order changed by you on less than 3 Business Days' notice, we reserve the right to refuse to complete the Order.
- (i) We may, at any time prior to our placing Concrete, or supplying Equipment or Services pursuant to an Order, immediately cancel or terminate an Order by written notice to you, if we reasonably determine that:
 - (i) we are unable to acquire any materials or goods required to perform the Services pursuant to such Order;
 - (ii) our costs of performing the Services materially increases; or
 - (iii) there is any substantial change to the site at which the Concrete is to be placed, or the Equipment or Services are to be supplied.

5. Payment

General

- (a) If you place an Order, You must pay to us, the cost of our services specified in the Quote, or calculated in accordance with the Price List (including any minimum charges, washout fees or Overtime Rate charges).
- (b) You expressly acknowledge and accept the prices contained in the Price List, including charges which vary based upon size of Pump and other out of pocket expenses such as washing out, and Overtime Rates.
- (c) Wherever possible, We will endeavour to provide a day docket for signature by you onsite at the conclusion of the works being performed and provide you with a copy.
- (d) The day docket will be evidence of the hours work and quantity of materials used, even in circumstances where the day docket is not signed.
- (e) If you wish to contest the contents of a day docket, you must do so within 3 Business Days receipt of the day docket. Failure to do so will render the day docket conclusive evidence of the hours worked and quantity of materials used, and you waive any right to challenge that evidence and are absolutely barred from doing so.
- (f) If you do not receive a day docket from us, You must notify Us within 3 Business Days. If you fail to notify us within that period, you are barred from challenging the day docket.
- (g) We will invoice you on the Friday following the works being performed. That date is the reference date for the purposes of SOPA.
- (h) Within 7 Business Days of receiving our invoice, you must issue us with a payment schedule for the purposes of SOPA.
- (i) Our payment terms will be specified on our invoice to you. If nothing is specified, our payment terms are 30 days from date of invoice.
- (j) Interest will be payable at the Interest Rate on any overdue invoices.
- (k) Despite anything else in these T&Cs, if we require you to pay a Deposit, unless or until you pay us that Deposit, we will not be required to commence manufacturing or ordering from any third party any Concrete, Equipment, or materials required to fulfil such Order.
- (l) We will not be responsible for any delay in placing the Concrete, or supplying the Equipment or Services due to you failing to pay any Deposit required.
- (m) Any Deposit paid by you to us immediately becomes our property, we can use such Deposit as we see fit, and such Deposit is non-refundable in any circumstances.

GST and Taxes

- (n) All Prices and amounts quoted by us are quoted as exclusive of GST unless otherwise expressed.
- (o) When we make a taxable supply to you, you must pay to us any GST applicable to such taxable supply, in addition to any other consideration you pay to us, at the time that you pay us for such taxable supply.
- (p) You are responsible for any taxes or duties (e.g. stamp duty, if applicable) relevant to us placing Concrete, supplying Equipment or Services to you, and you indemnify us in that regard.

No Set-Off

- (q) You must make all payments required to be made under these T&Cs without any set-off, counterclaim, deduction or withholding for any reason whatsoever, including cleaning fees or any third party costs.
- (r) If we are liable to pay you any amount for any reason, we may, at our discretion, elect to set-off such amounts from amounts that you must pay us under this or any other agreement

6. Interest

- (a) If you fail to pay us any amounts by the date that such payment falls due, you must pay us interest calculated at the Interest Rate on the outstanding amount, accruing and compounding daily.
- (b) Interest under clause 6(a) is payable on demand, and continues to accrue pursuant to the terms of that clause, until all such outstanding amounts (including previously accrued interest) have been paid in full.

7. Specifications

- (a) You are responsible for providing us with any specifications for any Concrete, Equipment or Services we are to supply.
- (b) Subject to the terms of these T&Cs, we are not responsible for any Concrete, Equipment or Services provided in accordance with your specifications that are not suitable or appropriate for your intended use of the Concrete or Equipment, or the relevant site conditions.
- (c) You irrevocably release, indemnify and keep us indemnified from all costs, expenses and liability whatsoever arising out of any specifications or Concrete you provide us:
 - (i) being incomplete, incorrect or inaccurate in any way; and/or
 - (ii) being inappropriate or unsuitable for your intended use of any Concrete, Equipment or Services, or for the relevant site conditions (including due to any change to the site conditions); and/or
 - (iii) any loss or damage suffered by Us to our Equipment as a result of an incorrect mix or bad batch of Concrete.

8. Quality and Warranties

- (a) We represent and warrant that, subject to any terms of these T&Cs to the contrary Equipment or Services we supply to you will comply with your Order and the specifications you provide to us.
- (b) To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied), except those representations, warranties or terms contained in these T&Cs.
- (c) These T&Cs include, by implication, only those warranties, conditions and terms that:
 - (i) law or legislation implies into these T&Cs; and
 - (ii) law or legislation prohibits the parties from modifying, excluding or contracting away.
- (d) You acknowledge that any Concrete we place and install for you will be supplied by a third party. Consequently, we have no responsibility or liability whatsoever, and you release, indemnify and keep us indemnified from all costs, expenses, loss, damage and liability whatsoever arising out of, or caused by, or related to:
 - (i) the specification of any Concrete;

- (ii) whether the Concrete complies with your specifications or is fit for purpose;
- (iii) the performance of any Concrete;
- (iv) the physical appearance of any Concrete;
- (v) any delays caused by the Concrete (including blockages within our Pumps) which will be charged to you at our hourly rates (including any applicable Overtime Rate);
- (vi) any delays in the delivery of the Concrete (for which you will be charged at our hourly rates); and
- (vii) anything that you, or your employees, contractors, agents or representatives do, or do not do, in relation to the Concrete whatsoever.

9. Delivery

Delivery and Access

- (a) If you require us to leave a public road and enter the site to unload or discharge the Concrete or Equipment, or provide Services:
 - (i) you must ensure that there is timely, safe, adequate and unrestricted access for the delivery vehicle to reach the relevant unloading or discharge point(s);
 - (ii) you must ensure that there is an authorised representative to supervise the delivery vehicle accessing the site to reach the relevant unloading or discharge point(s); and
 - (iii) for the avoidance of doubt, the Concrete and Equipment are delivered to you, and risk to the Concrete and Equipment passes to you, when the delivery vehicle reaches the nearest kerbside, not when the delivery vehicle reaches the unloading or delivery point, or when Concrete or Equipment are unloaded or delivered.
- (b) You indemnify and keep us indemnified from all costs, expense, damage, loss or liability whatsoever, including death or injury to any person, or damage to property, arising out of us being required to transport Concrete or Equipment or provide Services to a location other than the kerbside nearest to the Site.
- (c) In the event that we are not able to immediately access the kerbside or other location where the Concrete, Equipment or Services are to be discharged or unloaded or provided, and needs to wait for access, we may charge you additional fees for the delay and wait times (these may be included in a schedule of our Surcharge Fees).

10. Ordering and Risk of Concrete

- (a) You are solely responsible for ordering concrete.
- (b) You irrevocably agree that, where the Services include Pump Hire, you will not order any concrete until instructed by us.
- (c) We will not be responsible for any loss (including delay) that arises out of a breach by you of clause 10(b).
- (d) The mix of concrete is your sole responsibility. We will not be liable for any loss howsoever arising out of an incorrect mix or bad batch of concrete.
- (e) For the avoidance of doubt, We will expressly not be liable for any delay, disruption or other loss howsoever arising suffered by you in relation to the unsuitability of the Concrete, howsoever arising and will still be entitled to full payment for our Services.
- (f) We do not accept any risk in relation to the Concrete.
- (g) We are not responsible for insuring the Concrete.
- (h) Both before and after placement of the Concrete, you are solely responsible for any loss or damage to the Concrete, or any costs, expenses, loss, damage or liability as a result of your use of the Concrete. You irrevocably release, indemnify and keep us indemnified in that regard.
- (i) For the avoidance of doubt, you acknowledge that we are not liable for any cleaning costs incurred by you in relation to Concrete,

including any spillage or overflow or site mess, and you may not deduct or seek to set-off any of those costs against our invoice.

11. Delays

- (a) Any delivery or service times that we agree to are estimates, only.
- (b) While we will use our reasonable endeavours to meet any agreed delivery or service times, we are not responsible for any cost, expense, loss, damage or liability that you incur arising out of, or caused by us not delivering Concrete, or not performing Services, by or at the scheduled time (regardless of whether the delivery or service was early or late for any reason, including the breakdown of our equipment).

12. Indemnity as to damage to property or other works

- (a) You expressly acknowledge it is your responsibility to provide us with a safe space to blow out the line, at the conclusion of the works.
- (b) We accept no liability in relation to personal or property damage occurring from a blow out, and you expressly indemnify us from any loss suffered arising out of a blow out, howsoever arising, including but not limited to property damage or damage to persons (to the maximum extent permitted by law).

13. General Indemnity

- (a) In addition to anything else in these T&Cs, you indemnify us, and we are entitled to recover from you, all costs, expenses, loss, damage and liability whatsoever (including debt recovery or legal costs on a full indemnity basis) incurred or suffered by us caused by, or arising out of:
 - (i) you failing to comply with your obligations under these T&Cs; or
 - (ii) our enforcement of our rights under these T&Cs or any of the Documents, regardless of whether such enforcement action is successful or not.
- (b) Subject to the terms of these T&Cs, you irrevocably release and indemnify us from all costs, expenses, loss, damage, and liability whatsoever, incurred or suffered by you or us, arising out of your use of the Concrete, Equipment or Services we supply to you.

14. Warranties as to Capacity

- (a) You represent, warrant and covenant in our favour that:
 - (i) if the Customer is a company, the persons signing or issuing the Documents on behalf of the Customer have all necessary power, authority and consent, and the Company has undertaken all necessary corporate action, to execute the Documents, and give effect to the transactions contemplated therein;
 - (ii) if the Customer is a partnership, the persons signing the Documents on behalf of the Customer have all necessary power, authority and consent, and the partnership has undertaken all necessary action, to execute the Documents, and give effect to the transactions contemplated therein;
 - (iii) if the Customer is acting as trustee of a trust:
 - (1) the persons signing the Documents on behalf of the Customer have all necessary power, authority and consent, and the trust has undertaken all necessary trust action, to execute the Documents, and give effect to the transactions contemplated therein;
 - (2) the trustee is entering into the Documents both in its capacity as trustee of the trust, and in its individual capacity; and
 - (3) the trustee is entitled to be indemnified from the assets of the trust;
 - (iv) the Customer will not undergo a change of control, without notifying us (for the purposes of this paragraph, change of control includes adding, removing, or otherwise changing

directors, partners, trustees, or otherwise persons who have control of the Customer).

15. Assignment

- (a) We may assign our rights and obligations under these T&Cs at any time on terms that we see fit.

16. No Waiver

- (a) A party does not waive its rights under these T&Cs unless it gives written notice that it waives that right (and such waiver is limited to the instance referred to in such notice).
- (b) A right is not impaired or waived by:
 - (i) a failure to exercise that right;
 - (ii) a delay in exercising that right;
 - (iii) a partial exercise of that right;
 - (iv) a previous exercise of that right; or
 - (v) negotiations between the parties.

17. Force Majeure

- (a) We are not liable for any loss or damage you may suffer caused by any failure by us to perform our obligations resulting from, or caused by, any fact or circumstance outside of our reasonable control, including, but not limited to:
 - (i) you failing to do something you are required to do under these T&Cs;
 - (ii) strikes or lockouts;
 - (iii) fires, storms, natural disasters or other acts of God; or
 - (iv) riots, war or civil commotions.
- (b) If any event, fact or circumstance occurs, to which clause 17(a) applies, we will use all reasonable endeavours to remove such event, fact or circumstance.
- (c) Clause 17(b) does not, however, require us to settle any litigation, or employment or industrial dispute, whatsoever.

18. Severability

- (a) These T&Cs must be read so that their provisions are valid and enforceable. If a provision cannot be read, and to the extent that it is invalid or unenforceable, then:
 - (i) that provision is severed to the extent necessary to remove the invalidity or illegality; and
 - (ii) the remaining provisions remain valid and enforceable.

19. Jurisdiction

- (a) To the extent permitted by law, these T&Cs are governed by the laws of the Jurisdiction.
- (b) The parties irrevocably submit to the jurisdiction and courts of the Jurisdiction.

20. Notices

- (a) All notices required or permitted to be given under these T&Cs must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in communications between us from time to time.

21. General Definitions

Unless the context otherwise requires:

- (a) **Agreement** means this Agreement and schedules and annexures to it, as amended and substituted from time to time.
- (b) **Business Day** means a day except a Saturday or Sunday or other public holiday in Canberra, ACT.
- (c) **Claim** means any claim, suit, action, demand, or right.
- (d) **GST** has the meaning given in the GST Act.
- (e) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (f) **Jurisdiction** means the New South Wales.
- (g) **Liability** means responsibility for any loss (either direct or indirect), damage, or expense and includes liability for Consequential Loss.
- (h) **Party** means a person or entity who executes this Agreement.
- (i) **Parties** mean all the persons or entities who execute this Agreement.

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