GEOTON Pty Ltd
Geotechnical Consultants

TRADING TERMS AND CONDITIONS FOR GEOTON PTY. LTD. (ACN 129 764 629)

1. DEFINITIONS

1.1. **The Supplier** is Geoton Pty. Ltd. (ACN 129 764 629) of Unit 24, 16-18 Goodman Court, Invermay, in the State of Tasmania, 7248.

1.2. Any reference to "**the Customer**" includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.

1.3. **The Order** shall be defined as any request for the provision of Services by the Customer to the Supplier which has been accepted by the Supplier.

1.4. **The Services** are the geotechnical consulting services carried out by the Supplier, including investigation, assessment and analysis of site conditions and preparation of geotechnical engineering reports and associated products or services, including any advice or recommendations given.

1.5. **The Premises** are the land or land and buildings which are the subject of the Services.

1.6. Reference to **loss and damage** includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.

1.7. **Major failure** is as defined under the *Competition and Consumer Act 2010 (Cth)*.

1.8. **GST** refers to goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. GENERAL

2.1. These terms and conditions together with the Supplier's quotation, fee proposal, credit application form (if any) and the Customer's work or purchase order document (if any) constitutes the agreement between the Supplier and the Customer **("the agreement")**.

2.2. Any Order is deemed to incorporate these terms and conditions; which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.

2.3. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.

2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.

2.5. Where more than one Customer completes this agreement each shall be liable jointly and severally.

2.6. 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 and the offending provision shall be deemed as severed from these terms and conditions.

2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.

2.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.

2.9. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

3. QUOTATIONS AND PLACEMENT OF ORDERS

3.1. Any quotation given by the Supplier will expire after thirty (30) days.

3.2. A written quotation from the Supplier will include a scope of works detailing the specific Services to be performed by the Supplier.

3.3. The Supplier does not represent that it will provide any Services unless it is included in the quotation.

3.4. A request for Services may be placed by the Customer with the Supplier either verbally or in writing however the Supplier may require the Customer to return a signed copy of its quotation or the fee proposal or otherwise may require the Customer provide a work or purchase order document prior to providing any Services.

3.5. As a condition of acceptance the Supplier may require the payment of a deposit in respect of the Price and/or payment of the Price by interim or progress payments made at specified intervals or stages in the completion of the Services. If a deposit is required the Supplier may not be deemed to have accepted the Customer's request for Services unless or until such deposit has been paid.

3.6. The Supplier may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the quotation given or in the Customer's Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Services include, but is not limited to additions alterations or amendments to the quote or scope of works.

3.7. All prices quoted are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE

4.1. GST will be charged on the Services provided by the Supplier that attract GST at the applicable rate.

4.2. The Supplier reserves the right to change the Price in the event of a variation. Notice will be provided in writing by the Supplier within a reasonable time.

4.3. At the Supplier's sole discretion the Price shall be either:

4.3.1. The Supplier's quoted Price for the Order (subject to clause 5.2); or

4.3.2. As detailed on invoices provided by the Supplier to the Customer in respect of Services supplied.

5. PROVISION OF THE SERVICES

5.1. The Supplier reserves its right to:

5.1.1. Decline requests for any Services requested by the Customer.

5.1.2. Cancel or postpone appointments at their discretion.

5.2. Unless specified by the Supplier to the contrary in the Order, quotation or fee proposal, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of the agreement.

5.3. Subject to otherwise complying with its obligations under the agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.

5.4. The Customer grants full access to the Supplier and its servants and agents to the Premises and shall ensure a supply of water and/or electricity (at no cost) to enable the Supplier to carry out the Services (if required).

5.5. The Customer warrants that it is either the owner of the Premises or is acting with the express authority of the Owner and the Customer indemnifies and will continue to indemnify the Supplier in respect of this warranty; including any claim for loss and damage by the owner of the Premises against the Supplier.

6. PAYMENT AND CREDIT POLICY

6.1. Customers must make full payment to the Supplier within fourteen (14) days of being notified of completion of the Services (**"the due date"**), unless otherwise specified or agreed between the parties in writing.

Account Customer's Privacy

6.2. The Customer agrees:

6.2.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.

6.2.2. That the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.

6.2.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (pursuant to the *Privacy Act 1988*).

7. DEFAULT

7.1. In this clause the **"default date"** is the day after the due date for payment, as specified in the Supplier's tax invoice or written notice to the Customer.

7.2. In this clause the **"outstanding balance"** is the Price of the Order, less any payments made by the Customer prior to the default date.

7.3. The Customer will be liable for a dishonoured cheque fee of $40.00 for each cheque issued by the Customer and rejected by the Supplier's bank.

7.4. A signed statement from a duly authorised representative stating the amount due by the Customer is sufficient proof of the amount owing by the Customer to the Supplier unless proven otherwise by the Customer.

7.5. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:

7.5.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;

7.5.2. An account keeping fee of $15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;

7.5.3. Any debt collection or recovery costs incurred by the Supplier; and if the Supplier's debt collection agency **("the agency")** charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Supplier to the agency, at the agency's prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:

$$\text{Total Debt including Commission and GST} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission \% charged by the agency (including GST)}}$$

(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au).

7.5.4. Any charges reasonably made or claimed by the Supplier's or the agency's lawyer for legal costs on the indemnity basis.

8. RISK AND LIABILITY

8.1. The Customer will ensure when placing Orders that there is sufficient information and specifications to enable the Supplier to provide the Services, including, but not limited to advising or providing plans detailing any concealed easements, pipes or wiring and the like to the Supplier.

8.2. The Supplier takes no responsibility if the specifications provided by the Customer are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.

8.3. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of delay or failure to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.

8.4. The Supplier's assessment of the overall site condition is based upon selective point samples taken from the Premises and interpreted by the Supplier, its employees or sub-contractors. The site assessment will only identify the subsurface conditions at the time samples were taken and accordingly, actual conditions may differ from those inferred by the Supplier. Any recommendations provided can therefore only be treated as preliminary.

8.5. The Supplier's report is based on conditions which existed and/or were apparent at the time the Premises were inspected and/or assessed by the Supplier, its employees or subcontractors. Accordingly, if there are significant delays in the commencement of a project, the Customer should consult with the Supplier before relying on the report and follow the Supplier's advice and/or recommendations.

8.6. The Customer warrants that the Premises is in a safe condition for the Supplier's servants and agents to perform the Services, and the Customer indemnifies and agrees to keep the Supplier indemnified against any and all claims for personal injury and loss and damage arising from or in connection with failing to keep the Premises safe to work in, including but not limited to injury caused by any feature or condition of the Premises, whether or not any such feature or condition is reasonably obvious and whether or not the feature or condition is known to the Customer.

8.7. The Supplier is not liable to provide any insurance cover in relation to the provision of the Services. The Customer is responsible to effect whatever insurance cover required at his or her own expense.

8.8. Subject to the Supplier's warranty for defective services, the Supplier's liability for any loss and damage associated with, arising from or in connection with the Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

8.9. Any sample taken by the Supplier from the Premises will be retained for at least three (3) months. After this time the samples will be disposed of, unless the Customer has requested, in writing, that the Supplier retain the samples for a longer period of time.

9. WARRANTY

9.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.

9.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.

Warranty for Services

9.3. Provided that the Customer reports any defect in any Service provided, preferably within fourteen (14) days from the date that the defect became apparent, the Supplier will rectify any defect in the Services within a reasonable period of time.

9.4. In respect of all claims under warranty, the Supplier reserves it right to inspect the Services alleged to be defective.

9.5. The Supplier provides the following warranty to Customers in respect of Services supplied: *"Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service you are entitled:*

- *To cancel your service contract with us; and*
- *To a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract."

Claims made under Warranty

9.6. Claims for warranty should be made in one of the following ways:

9.6.1. The Customer must send the claim in writing to the Supplier's address Unit 24, 16-18 Goodman Court, Invermay, in the State of Tasmania, 7248;

9.6.2. The Customer must email the claim to the Supplier to admin@geoton.com.au.

9.6.3. The Customer must contact the Supplier on the Supplier's business number (03) 6326 5001.

10. TERMINATION AND CANCELLATION

Cancellation by Supplier

10.1. The Supplier may cancel any Order to which these terms and conditions apply at any time before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.

10.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:

10.2.1. Any money payable to the Supplier including any progress payment becomes overdue for payment; or

10.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

10.3. The Customer may cancel any Order by providing no less than twenty-four (24) hours' notice to the Supplier before the Services were due to be performed.

10.4. In the event that the Customer cancels the Order, the Customer shall be liable for loss and damage suffered by the Supplier; but limited to:

10.4.1. The Price of the Order; or

10.4.2. Any costs or expenses incurred by the Supplier, including the cost of purchasing the Goods from a third party to meet the Order and the value of any services already carried out by the Supplier and/or a third party.

10.5. The Supplier may retain any deposit or other sum paid by the Customer in respect of the Price of the Order and offset such sum or deposit in satisfaction or partial satisfaction of any loss and damage suffered by the Supplier as a result of the Customer's cancellation of the Order.

11. INTELLECTUAL PROPERTY

11.1. The copyright in all documents prepared by or at the request or direction of the Supplier shall remain the property of the Supplier.

11.2. The Customer will not supply or permit any report of the Supplier to be seen by or given to any third party, without written consent of the Supplier.

12. ENTIRE AGREEMENT

12.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.

12.2. The agreement is deemed to be made in the State of Tasmania and all disputes hereunder shall be determined by the appropriate courts of Tasmania.

12.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.

12.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* or the *Fair Trading Acts* in each of the States and Territories of Australia.