BCE SURVEYING PTY LTD STANDARD TERMS AND CONDITIONS OF TRADE

1. Definitions

"Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010 (Cth).*

"BCE" means BCE Surveying Pty Ltd (ACN 088 348 136).

"Client" means the party described in the Contract as the party procuring Services from BCE Surveying.

"Completion of the Services" means that stage in the provision of the Services when the Services are complete except for minor omissions which do not prevent the Services being reasonably capable of being used for their intended purpose.

"Contract" means the agreement formed by acceptance of the Quote and these terms of trade.

"CPI" means the Consumer Price Index Number (All Groups) for the Perth Statistical Division published by the Australian Bureau of Statistics.

"Deliverables" means all documents to be provided by BCE under the Scope as described in the Quote.

"Disbursements" means the additional costs stated to be Disbursements in the Quote.

"Finish Date" means the date in the Quote for the Completion of the Services, if one is stated.

"GST" means the goods and services tax levied by the Federal Government on the value of the Services.

"Intellectual Property" means all rights now or in the future conferred under statute, common law or equity in, or in relation to, patents and inventions, designs, trademarks, domain names, copyright and moral rights, confidential information, circuit layouts and plant varieties, and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967, whether or not those rights are registered or unregistered, the subject of an application for registration, or are registrable or unregistrable.

"Legislative Change" includes a change to the legislation or subordinate legislation of the Commonwealth of Australia or State or Territory, including local laws, applicable to the Services or any instrument made under it including local law of a municipality.

"Lump Sum" means the Lump Sum for the provision of the Services stated in the Quote, if one is stated.

"Quote" means the quotation from BCE to the Client for the Services and which incorporates by reference these Standard Terms and Conditions of Trade and which form part of the Quote.

"Rates" means, where the Quote does not specify a Lump Sum, the charges for the various tasks BCE will provide to deliver the Services but does not include the Disbursements.

"Scope" means the scope of works described in the Quote.

"Services" means the work to be done by BCE under the Scope.

"Site" means the site to which Services relates and the place where BCE may need to perform the Services.

"Start Date" means the date in the Quote for the Services to commence.

2. The Contract

2.1 The Quote, once accepted by the Client, constitutes the entire agreement between BCE and the Client and supersedes any previous understanding, agreement, representation or warranty relating to the subject matter of the Contract notwithstanding:

(a) any previous convention or course of conduct between the parties; and

(b) any verbal or written communication between the parties prior to the Contract being entered into.

2.2 The term of any purchase order or other form of conditional acceptance of the Quote by the Client that is additional to or inconsistent with the Quote shall not form part of the Contract unless accepted in writing by BCE.

2.3 Should the Quote not be accepted within thirty (30) days it shall be deemed withdrawn.

2.4 The Lump Sum shall, at BCE's discretion, be adjusted annually to reflect any CPI percentage change. Should the Quote not be Lump Sum but at Rates, the Rates shall, at BCE's discretion, be adjusted by written notice to the client annually to reflect any CPI percentage change.

2.5 The Lump Sum or if the Quote is for Rates, the Rates shall be adjusted to incorporate any increased cost incurred by BCE due to any Legislative Change or industry award or workplace agreement that may be introduced or amended during the time the Services are being undertaken.

2.6 If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in the following order of precedence:

(a) the Quote from BCE to the Client for Services;

(b) any other document which is attached to or incorporated by reference to the Quote referred to at (a) above except these standard terms and conditions of trade;

(c) these standard terms and conditions of trade.

3. The Services

3.1 BCE shall perform the Services and the Client shall pay BCE the Lump Sum Fee alternatively at the Rates in either case together with the Disbursements and in addition GST.

3.2 Should BCE discover any ambiguity, error, omission or discrepancy or otherwise in the Scope such that the Services cannot be provided, it shall notify the Client and the Client shall promptly provide a suitable amendment to the Scope.

3.3 Should such amendment increase the Scope, BCE shall be entitled to an increase to the Lump Sum valued as a variation.

3.4 The Disbursements shall be charged at the cost stated in the Quote, alternatively if no cost is stated, at cost.

4. Payment Claims

4.1 BCE may submit claims for payment monthly by the last working day of each month, for the value of the Scope performed up to then, together with all other amounts owing under the Contract to that time and in addition GST.

4.2 Should BCE achieve Completion of the Services before the end of a month, BCE may submit a claim under clause 4.1 then.

4.3 A claim for payment must be in the form of a tax invoice and for purposes of the *Construction Contracts Act (2004) (WA)* this paragraph shall be a written provision about how BCE is to make a claim to the Client for payment.

4.4 The Client consents to receiving all tax invoices by post, personal delivery or electronically with a digital signature thereon.

4.5 The Client must within 28 days of receipt of a claim for payment, pay the claim without set-off or deduction to the nominated bank account on the tax invoice.

4.6 If a payment claim is not paid when it falls due BCE may by notice to the Client suspend work on the Scope.

4.7 Notwithstanding the above BCE may by notice to the Client require immediate payment (on account) of such portion of the Lump Sum or portion of the anticipated cost of the Services if the Quote is for Rates as it may nominate before it releases to the Client any Deliverables relating to the Services.

4.8 Interest on any amounts not paid to BCE when they fall due shall attract interest at 12.5% per annum until paid.

5. Report on underground services

5.1 If the Services include the identification of sub-surface objects by use of ground penetrating radar or other methods then a report shall be prepared by BCE which will either:

(a) identify the nature of sub-surface objects depending on whether visual confirmation by uncovering the sub-surface object has been undertaken; alternatively

(b) indicate the likely or probable presence of sub-surface objects from its interpretation of the data produced by BCE's equipment and other investigations being a quality level specified in AS 5488-2013 Classification of Subsurface Utility Information **("AS 5488")**, the precise nature of which has not been confirmed by excavation. Visual confirmation of such objects shall be the Client's responsibility.

5.2 The report will by its very nature in identifying or alternatively indicating the likely or probable presence of sub-surface objects pursuant to the quality level specified in AS 5488 indicate areas where no object should be present.

5.3 The Client acknowledges that the report will also state a level of confidence in the absence of sub-surface objects in a particular area, this level of confidence being as specified in AS 5488 and this level of confidence will be determined (amongst other things) by the actual site conditions.

5.4 The Client acknowledges that the absence of sub-surface objects can never be absolutely excluded by the use of ground penetrating radar technology or otherwise and the risk BCE assumes is confined to the appropriate interpretation of the data produced by its investigations. BCE accepts no liability beyond this clause should subsequent excavation prove any feature was omitted, incorrectly represented in magnitude in any dimension, direction or location or incorrectly represented as being rock, water, void or other geological feature.

5.5 Should BCE repeat information it has sourced from third parties in its report, BCE makes no representation or warranty that such information is accurate.

6. Variations

6.1 The Client may direct BCE to perform additional Services within the general range of the Scope but not outside it.

6.2 If the Quote is for a Lump Sum, the Lump Sum shall be adjusted by either of the following:

(a) an amount agreed, or if no amount is agreed;

(b) any rates specified in the Quote for variations, or if no rates are specified;

(c) fair and reasonable rates.

6.3 If the Quote is for Hourly Rates:

(a) an agreed rate, or if no rate is agreed;

(b) the Rates, so long as they are reasonable; or

(c) fair and reasonable rates.

7. Time

7.1 The Client shall do all things necessary to enable BCE to commence the Services on the Start Date and ensure that BCE is given unimpeded access to the Site throughout the time from the Start Date to the Finish Date (if any), or so long as it takes for BCE to achieve Completion of the Services.

7.2 Should BCE be unable to perform any of the Services due to any act, omission or event not caused by it and it is not able to reasonably avoid placing its resources on standby, the cost of such standby should be paid by the Client as a variation.

7.3 Should BCE be delayed in commencing the Services after the Start Date or not be able to achieve Completion of the Services by the Finish Date by any event or any act or omission not caused by it, then the additional cost that BCE incurs shall be paid by the Client as a variation.

8. Legislative Changes

Should there be a Legislative Change and such change results in BCE incurring addition cost, such additional cost shall be paid by the Client as a variation.

9. Extensions of Time

9.1 BCE must achieve Completion of the Services by the Finish Date.

9.2 The Client must grant BCE an extension of time to the Finish Date for any delay to the Completion of the Services arising from any act, omission or event not caused by BCE.

9.3 The Client must pay BCE any costs arising from an extension of time to be valued as a variation.

10. Termination for Default

10.1 If either party commits a substantial breach of this Contract, the other party may give to the party who committed the breach a notice in writing to show cause why the party serving the notice should not terminate or suspend the Contract.

10.2 The notice to show cause shall state that it is a notice to show cause why the Contract should not be terminated or suspended (stating which) specify the alleged breach in sufficient detail for the other party to respond and require the other party to either remedy the alleged breach within a stated time or respond in writing giving reasons why the Contract should not be terminated within five (5) working days of service of the notice.

10.3 A substantial breach includes but is not limited to:

(a) a failure by the Client to make the site available or making it available with impeded access;

(b) a failure by BCE to proceed with the Services with due diligence and without delay due to its own fault;

(c) a failure by the Client to provide any direction that BCE may request during the performance of the Services to permit it to perform the Services;

(d) failure by the Client to comply with **clause 14**; and

(e) failure by the Client to pay a payment claim when it falls due.

11. Copyright and Intellectual Property

11.1 BCE shall retain the rights in all Intellectual Property created or used by it in undertaking the Services.

11.2 BCE grants to the Client a royalty free licence to use the Intellectual Property in the Deliverables for the purpose for which the Services are provided.

11.3 The licence created by clause 11.2 is irrevocable except that it may be revoked by BCE if the Client does not pay a payment claim within five (5) working days of a written demand for payment being made by BCE, or BCE terminates the Contract.

12. Insolvency

12.1 This Contract may be terminated by notice by a party upon the other party committing an act of insolvency and the rights of the party terminating the Contract shall be retained.

12.2 For the avoidance of doubt clause 10 shall not apply to an act of insolvency.

12.3 For purposes of this clause an act of insolvency includes:

(a) making known to anyone that the party is insolvent;

(b) failing to pay a judgment debt;

(c) if the party is an individual, committing an act of bankruptcy;

(d) If the party is a corporation it:

(i) has a receiver, controller or other manager appointed to it;
(ii) proposes to or does enter into a deed of company arrangement with its creditors;
(iii) is wound up or an application to wind up the company is made; or
(iv) it fails to comply with a demand under sec 459E of the *Corporations Act 2001*.

(e) a mortgagee of the party's property goes into possession

13. Limit of Liability

13.1 The liability of BCE to the Client arising out of or in connection to the Contract, including the performance or non-performance of the Services whether under contract, in tort, in equity, under statute or otherwise shall be limited in aggregate to the amount specified in the Quote if a Lump Sum is stated or the value of the Services if Rates are stated.

13.2 BCE shall not be liable to the Client in respect of any indirect, consequential or special losses (including loss of profit, loss of business opportunity and damages or liquidated damages payable under any other Contract).

13.3 BCE shall be deemed to have been discharged from all liability in respect of the Services whether under contract, in tort, in equity, under statute or otherwise at the expiration of twelve (12) months from the date of Completion of the Services.

13.4 Should any of this clause be void as a result of section 64 of the Australian Consumer Law or be declared an "unfair contract term" pursuant to the Australian Consumer Law then BCE's liability for breach of condition or warranty is limited to:

(a) the supply of the Services again; alternatively

(b) the cost of having the Services supplied again.

14. Insurance

14.1 The Client must, before commencement of the Services at the Site and at its expense, effect and maintain until BCE has achieved Completion of the Services, the following insurances with reputable and financially sound insurers on terms reasonably acceptable to BCE:

a) Worker's Compensation and Employer's Indemnity insurance covering the client's legal liability to make any payment under the *Worker's Compensation and Injury Management Act 1981* as amended and any other relevant statute for death, disability or personal injury sustained by any worker or deemed worker of the Client including cover to an amount of not less than $50 million dollars for the Client's legal liability to pay damages at Common Law to workers employed under a Contract of Service; and

b) Public Liability insurance covering BCE as co-insured for legal liability to pay compensation for claims and liabilities in respect of any personal injury or property damage of any person (including but not limited to that of the Client) from an occurrence in connection with the performance of the Contract. The insurance shall be unlimited as to the number of occurrences and shall provide cover in respect of each and every occurrence to a limit of not less than $20 million.

14.2 Before the commencement of performance of the Services and each time the policies are renewed or varied, the Client must provide BCE with such evidence, including copies of the contracts of insurance, schedule, endorsements and extensions as BCE may require.

14.3 Without derogating from the preceding sentence, the Client must provide a certificate of currency in respect of each of the insurances specified in this part issued by the insurer in accordance with such forms as BCE reasonably prescribes.

14.4 If the Client fails to take out or maintain the insurances to the extent required by this clause BCE shall be entitled to recover, from the Client all costs incurred by BCE or BCE's insurer relating to:

(a) BCE taking out its own insurance for the purpose of covering itself and the Client to the extent required by this clause; or

(b) increased premiums and the amount payable by BCE for any deductible resulting from claims against BCE's existing insurance policies that would have otherwise been covered solely by the Client's insurance policies if the Client had been insured to the extent required by this clause.

14.5 The Client must advise BCE in writing immediately of any material change or cancellation of any of the insurances required by this clause.

14.6 This clause applies to the extent BCE or any of its personnel (including subcontractors) are required to be on, or near the vicinity of, the Site for the purposes of the Services.

15. Service of Notices

15.1 A notice under this Contract must be served by hand, mail, fax or email to the address shown on the Quote, or if notice of a change of address is given, at the last notified address.

15.2 A notice served by mail is deemed served three (3) working days after posting, or if served by fax, on receipt of successful transmission notice for the number given or if by email, when it is able to be retrieved by the addressee.

15.3 Should the Client appoint an agent to represent it under the Contract, any notice or claim for payment shall, if served on the agent, be sufficient service of the notice or submission of the claim for payment on the Client.

16. GST

16.1 In these Standard Terms & Conditions of Trade each of the expressions **"adjustment note"**, **"consideration"**, **"GST"**, **"input tax credit"**, **"recipient"**, **"supply"**, **"supplier"**, **"tax invoice"** and **"taxable supply"** have the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*.

16.2 Unless otherwise expressly stated in the Quote, the Lump Sum and Rates or other sums payable or consideration to be provided under the Contract including rates for variations are exclusive of GST.

16.3

(a) Notwithstanding any other provision of the Contract, if the Contract expressly states that any amount payable pursuant to clause 16.2 is GST exclusive, then the Client must pay to BCE Surveying an amount equal to the GST payable on the taxable supply the subject of the Contract.

(b) The Client must pay the amount referred to in **clause 16.3(a)** in addition to and at the same time as payment for the taxable supply is required to be made under the Contract.

16.4 If the Contract requires a party to it to reimburse the other party for any Disbursement or other expense, loss or outgoing ("in all reimbursable expense") incurred by the other party, the amount required to be reimbursed by the first party will be the sum of:

(a) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and

(b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

16.5 If a GST inclusive price is charged or varied under the Contract, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.

16.6 If the amount of GST paid or payable by the supplier on any supply made under the Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.

17. Governing Law

The law governing the Contract shall be that of the State of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State.