

# General Conditions of Engagement

Mainmark Ground Engineering Pty Ltd.

Please read these General Conditions of Engagement before you sign the Contract. If you have any questions please call us.

These General Conditions of Engagement ("**MAINMARK Terms**") together with the other documents in Clause 1 constitute the contract between Mainmark Ground Engineering Pty Ltd ("**MAINMARK**") and the person, company or other entity purchasing services (and associated materials) (collectively "**Services**") from MAINMARK ("**Client**").

1. **CONTRACT:** This contract for the supply of Services includes the MAINMARK Terms, Client Application Form, Quotation and Client Acceptance Form ["**Contract**"]. The Contract supersedes all previous submissions, representations, agreements or undertakings. If there is any inconsistency between any of the terms of the documents comprising the Contract the following order of precedence shall apply:

- (i) The Quotation;
- (ii) MAINMARK Terms; and
- (iii) Client Acceptance Form.

2. **CANCELLATION:** The Client cannot cancel the Contract unless MAINMARK agrees in writing. The Client agrees that where the Contract is cancelled less than 5 days before the scheduled start date to provide the Services, MAINMARK is entitled to retain the deposit paid by the Client pursuant to Clause 4.1.

3. **GST:**

3.1 The parties acknowledge that all amounts payable under the Contract are expressed on a GST inclusive basis unless expressly stated otherwise. If an amount payable for a Taxable Supply to which GST applies under the Contract is expressed to be GST exclusive then the amount payable for that Taxable Supply shall be the amount specified in the Contract plus GST.

3.2 If GST is payable on a Taxable Supply made by one party (**Supplier**) to another party (**Recipient**) then the Supplier shall provide the Recipient with a Tax Invoice before the Recipient is required to pay any amount to the Supplier in respect of the Taxable Supply.

3.3 Words or expressions used in this Clause 3 which are defined in the *New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this Clause.

4. **TERMS OF PAYMENT:**

4.1 The deposit payable under this Contract will be such percentage of the total amount payable under the Contract (**Contract Sum**) as is set out in the Quotation.

4.2 The balance of the Contract Sum is due and payable by the Client upon completion of the Services.

4.3 If the Client disputes the whole or any portion of any amount due to MAINMARK, the Client must pay the portion of the amount which is not disputed and shall notify MAINMARK in writing within 3 days of completion of the Services of the reasons for disputing the amount. If the Client does not notify MAINMARK that it disputes the amount due within such period, the Client will be deemed to have accepted the amount due to MAINMARK. If it is resolved or determined that some or all of the amount disputed by the Client ought properly to have been paid at the time it was due to MAINMARK, then the Client shall pay the amount finally resolved or determined together with interest on that amount in accordance with Clause 6.

4.4 The Client shall not be entitled to withhold payment of any amount from MAINMARK on the basis that it has not received payment from a third party.

5. **ADDITIONAL COSTS:**

5.1 Where there is, or is likely to be any delay to scheduled Services due to insufficient access, Client's nominated representative being unavailable or any other circumstances outside MAINMARK's reasonable control, MAINMARK:

- (a) will promptly upon becoming aware of any such event which has or may give rise to a delay, notify the Client of the

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# General Conditions of Engagement

Mainmark Ground Engineering Pty Ltd.

event, the estimated delay and the estimated increased cost; and

- (b) may charge, in addition to the Contract Sum, a standby rate of \$600 excluding GST per hour capped at \$4,500 excluding GST per 7.5 hour day for each day of the delay or part thereof.

5.2 Where the Client fails to perform, or inadequately performs any works which are the Client's responsibility under the Contract, MAINMARK may perform such work in addition to the Services and may charge the Client for such work at cost to MAINMARK plus 20%.

6. **LATE PAYMENT CHARGES:** If any amount is not paid by the Client by the due date then a late payment charge of 9% of the overdue amount shall be applied on the day following the due date.

7. **SITE ACCESS & DELAYS:**

The Client shall be responsible, at its cost, for providing MAINMARK with safe, suitable and timely access to the area where the Services are to be provided (Site) including for MAINMARK's vehicles, materials, personnel, plant and equipment.

8. **HOURS OF WORK:**

8.1 Subject only to any regulatory restrictions the Services shall be carried out between the hours of 0700 and 1700 from Monday to Friday inclusive (excluding statutory holidays). MAINMARK may, at its discretion, work additional or altered hours and/or days at no cost to the Client and with no costs being imposed on MAINMARK by the Client.

8.2 If additional or altered hours or days are requested by the Client and additional costs are incurred by MAINMARK as a result of such request, the Client shall be liable to pay such increased costs as notified by MAINMARK.

9. **EXCLUSIONS:** The Services and the Contract Sum exclude the following, which shall be the Client's sole responsibility and at the Client's sole cost:

- (a) the obtaining and cost of any required authorities or approvals in relation to the Services (including any related fees);

- (b) Site inspections by any authorities/consultants and costs arising therefrom;

- (c) the security and protection and/or removal, replacement, adjustment or repair of all termite and vermin barriers or the like, finishes, fixtures, fittings, floor coverings, joinery, partitions, ceilings, furniture, goods, articles, equipment, buildings and services, landscaping and external works, (including to adjacent properties);

- (d) any damage to services (including underground services and connections), building structures (including any secondary cracking of masonry, plasterwork or the like), adjacent elements, wall/floor finishes, glass, joinery, landscaping, etc.;

- (e) the resultant effects of saw-cutting of concrete/joint lines;

- (f) ingress of MAINMARK material into drainage systems or fittings, conduits, appliances, services or unrelated voids/rooms; and

- (g) the subsequent failure, including movement and cracking, due to structural deficiency, inadequate articulation, altered use and/or loading, tree roots, flora, fauna, sub-base and/or subgrade conditions, ingress of water from flooding or broken pipes.

10. **RESPONSIBILITY FOR INFORMATION:**

- (a) The Client shall provide MAINMARK with all information that is relevant to the performance of the Services (including in relation to physical conditions on/under the works/Site or surroundings) and any other information reasonably requested by MAINMARK.

- (b) The Client warrants that all information provided to MAINMARK is true, accurate and complete in all

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# General Conditions of Engagement

Mainmark Ground Engineering Pty Ltd.

respects and MAINMARK shall have no liability to the Client due to inaccurate or incomplete information.

11. **CLIENT AVAILABILITY:** The Client, or the authorised representative of the Client, must be available throughout the works, to answer queries and give requested directions.
12. **VARIATIONS:**
  - 12.1 Any variation to the Services must be agreed in writing by the Client and MAINMARK.
  - 12.2 If a party intends to propose a variation to the Services that party must provide written notice to the other party containing a description of the variation and the reason for proposing such variation (and where the variation is proposed by MAINMARK, details of any impact of the variation on the time or cost incurred to complete the Services).
  - 12.3 If the variation is proposed by the Client, MAINMARK must in response to receipt of a notice provided by the Client under Clause 12.2, provide the Client with details of:
    - (a) the cost of implementing the proposed variation;
    - (b) any estimated delay to the performance of the Services which may result from implementation of the Variation; and
    - (c) any estimated increased costs which may result from implementation of the variation.
  - 12.4 The parties shall agree the scope and cost of implementing the variation and any adjustment required to the time for completion of the Services and the Contract Sum prior to MAINMARK commencing the variation.
13. **AUTHORITY:** The Client warrants where a third party is signing on behalf of the Client the Client Acceptance Form, such party has the express authority to do so.
14. **INSURANCES:**
  - 14.1 In respect of the Services, MAINMARK will maintain Public Liability Insurance of not less than \$20,000,000. Contract works

insurance shall be the responsibility of the Client (if the Client so elects).

- 14.2 MAINMARK shall effect and maintain insurance in relation to the performance of the Services pursuant to the Relevant Domestic Building Insurance Legislation in the State or Territory in which the Services are provided. For the purposes of this Clause 'Relevant Domestic Building Insurance' means, where the Site is in NSW, Part 6 of the *Home Building Act 1989* (NSW), and where the Site is in another jurisdiction, the equivalent legislation in that jurisdiction, including all applicable regulations and other subordinate legislation.
15. **WARRANTY (subject to the Exclusions):**

MAINMARK warrants that, under normal conditions all injected materials will resist shrinkage and deterioration for up to 50 years.
16. **DISPUTES:**
  - 16.1 In the event of a dispute in connection with the Contract ("**Dispute**"), a party shall give written notice of the Dispute to the other party.
  - 16.2 In the event the Dispute is not resolved by direct good faith negotiations then the Client shall refer the matter to the Consumer, Fair Trading, or other like Tribunal in the relevant jurisdiction to the Site to the extent that the Dispute falls within its jurisdiction.
  - 16.3 The Client acknowledges that Clause 16.2 provides a process to resolve disputes and the Client shall not in any public or web-based forum, disparage or make adverse comments about MAINMARK or the Services recognising that the dealings between MAINMARK and the Client are confidential (to which Clause 22 applies) and there is a dispute resolution procedure provided by this Clause.
17. **LATENT CONDITIONS:** MAINMARK shall not be liable for any loss, cost, expense or damage suffered or incurred by the Client or any other person to the extent that the physical conditions on/under the Site or its surroundings, differ materially from the physical conditions which existed at the

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# General Conditions of Engagement

Mainmark Ground Engineering Pty Ltd.

date of the Contract and which MAINMARK, at that time, could reasonably have ascertained.

## 18. DEFAULT AND TERMINATION:

18.1 The Client will be in default if:

- (a) it commits a breach of any of its obligations (including as to payment) to MAINMARK under the Contract; or
- (b) it becomes insolvent, is wound up, has a receiver or liquidator appointed, commits an act of bankruptcy or suffers any similar insolvency event or ceases to carry on business; or
- (c) MAINMARK's plant, equipment, materials or vehicles are at significant risk of damage or loss in MAINMARK's reasonable opinion.

18.2 If any of the events described in Clause 18.1 occur, MAINMARK may:

- (a) immediately suspend the Services or terminate the Contract;
- (b) require all amounts owing to MAINMARK (whether or not due for payment) to be paid immediately;
- (c) enter the Site and take possession of MAINMARK's plant, equipment, materials or vehicles; or
- (d) exercise any other rights that MAINMARK has under the Contract.

18.3 The Client indemnifies MAINMARK against any cost, claim, damage, expense or liability suffered or incurred by MAINMARK where exercising its rights under this Clause 18 or otherwise acting to recover any MAINMARK property or monies payable by the Client.

18.4 The Client shall be entitled to terminate the Contract:

- (a) immediately where MAINMARK becomes insolvent, is wound up, has a receiver or liquidator appointed or suffers any similar insolvency event or ceases to carry on business or
- (b) on giving 15 days written notice to MAINMARK in the event that MAINMARK is in substantial default of its obligations pursuant to the Contract and such default has not been

corrected or reasonably commenced to be corrected within 15 days following written notice of such default.

## 19. LIABILITY:

19.1 Subject to any statutory or regulatory provisions to the contrary in relation to the provision of the Services:

- (a) if MAINMARK is found liable for loss or damage to the Client in connection with the Services it shall not be liable for any indirect, consequential or special loss; and
- (b) The maximum aggregate liability for loss or damage on the part of MAINMARK shall not exceed the greater of the Contract Sum or \$50,000.

19.2 For the avoidance of doubt MAINMARK will not be liable for any loss or change suffered or incurred by the Client arising out of or in connection with:

- (a) any action taken by MAINMARK pursuant to Clause 18.2; or
- (b) the Exclusions.

20. **INTELLECTUAL PROPERTY:** This Contract does not grant the Client any intellectual property rights, title or interest in relation to the Services or in any documents (including copyright) provided to the Client in relation to the Contract.

21. **FORCE MAJEURE:** MAINMARK will not be liable for any failure or delay to perform its obligations under the Contract caused by any event or circumstances beyond its reasonable control ("**force majeure**"). The performance of MAINMARK's obligations under the Contract will be suspended for the period of any delay due to force majeure. Any costs incurred by MAINMARK due to force majeure will be payable by the Client. Nothing in this Clause shall excuse the Client from any obligation to make a payment when due under the Contract.

22. **CONFIDENTIALITY:** The Client will at all times treat as confidential all non-public information and material received from MAINMARK (including the existence, terms

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# General Conditions of Engagement

Mainmark Ground Engineering Pty Ltd.

and pricing included in the Contract and its dealings with MAINMARK generally) and will not publish, release or disclose the same.

23. **CLIENT INFORMATION:** The Client authorises MAINMARK to collect, obtain, retain and use information about the Client from any person for the purpose of assessing the Client's creditworthiness and to disclose information about the Client to any person to enable MAINMARK to exercise or enforce any of its rights, remedies and powers under the Contract or at law.

## 24. WORK, HEALTH & SAFETY:

24.1 For the purposes of this Clause:

(a) **'Principal Contractor'** means where the Site is in:

(i) a Uniform WH&S State or Victoria, 'principal contractor' within the meaning of the WH&S Regulation; and

(ii) Western Australia, 'main contractor' within the meaning of the WH&S Regulation;

(b) **'Uniform WH&S State'** means the States of New South Wales, Queensland, the Northern Territory, Tasmania, South Australia and the Australian Capital Territory;

(c) **'WH&S Act'** means where the site is in:

(i) a Uniform WH&S State the *Workplace Health & Safety Act 2011* (NSW) in New South Wales or its equivalent in the relevant other jurisdiction;

(ii) Victoria, the *Occupational Health and Safety Act 2004* (Vic); and

(iii) Western Australia, the *Occupational Safety and Health Act 1984* (WA),

in each case, as amended from time to time;

(d) **'WH&S Legislation'** means for each State and Territory, the relevant WH&S Act and WH&S Regulation in that jurisdiction as amended from time to time; and

(e) **'WH&S Regulation'** means where the site is in:

(i) a Uniform WH&S State the *Work Health and Safety Regulation 2011* (NSW) in New South Wales or its equivalent in the relevant jurisdiction;

(ii) Victoria, the *Occupational Health and Safety Regulations 2007* (Vic); and

(iii) Western Australia, the *Occupational Safety and Health Regulations 1996* (WA)

in each case, as amended from time to time.

24.2 The parties agree to the extent that the WH&S Act applies to the Services, the Services are in the nature of contract works and to the extent permitted by the WH&S Legislation MAINMARK is engaged by the client as a Principal Contractor in respect of those Services at the Site from the date of commencement of the provision of the Services.

## 25. GENERAL:

25.1 **Costs:** The Client shall pay all costs and expenses (including legal fees on a solicitor and own client basis) incurred by MAINMARK exercising or enforcing any of MAINMARK's rights, remedies and powers under the Contract or at law.

25.2 **Assignment:** The Client may not assign or otherwise transfer any of its rights, powers or obligations under the Contract without MAINMARK's prior written consent. MAINMARK may assign, sub-contract or otherwise transfer any of its rights, powers or obligations under the Contract.

25.3 **Severance:** The illegality, invalidity or unenforceability of a provision of the Contract shall not affect the legality, validity or enforceability of any other provision of the Contract.

25.4 **Waiver:** No failure or delay by MAINMARK in exercising any power or right conferred on MAINMARK by the Contract shall operate as a waiver of such power or right.

25.5 **No set-off:** In no event shall any price or amount payable for the Services under the

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# General Conditions of Engagement

Mainmark Ground Engineering Pty Ltd.

Contract (including any additional costs)  
be subject to any set-off, deduction or  
counterclaim of any kind by the Client.

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