

General Terms and Conditions and Security Agreement ©

IN CONSIDERATION of SOUTH VAC Pty Ltd ACN 613 574 459 t/a SOUTH VAC Hydro Excavation and Wet/Dry Vacuuming **ABN 99 613 574 459** (hereinafter referred to as “SOUTH VAC”) providing commercial credit facilities to the party completing the application (hereinafter referred to as “the Client”) annexed to these conditions:

- (i) The Client acknowledges and agrees that the following applies to and forms part of any contract for the supply Services by SOUTH VAC and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Client. Any request from the Client to SOUTH VAC for the supply of Services shall constitute acceptance of these general terms and conditions.
- (ii) The Client acknowledges that where the Client consists of more than one party or entity, liability shall be joint and several.
- (iii) These terms and conditions, including any Credit Limits set by SOUTH VAC, are effective from the date of acceptance by the Client and may be amended or superseded from time to time by notice given by SOUTH VAC by any means. Unless or except specifically excluded herein, SOUTH VAC and the Client retain any rights and remedies available to them in any prior or pre-existing agreement.
- (iv) “Services” shall mean all services supplied by SOUTH VAC to the Client, or ordered by the Client but not yet supplied, and includes services described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which SOUTH VAC may intend to register a Security Interest.
- (v) “Price” shall mean the cost of the Services as referred to in SOUTH VAC’s price lists, prepared quotes & / or specific arrangements and shall be subject to change from time to time without notice.

1. Personal Property Securities Act (2009)

- 1.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 1.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Services (account) – being a monetary obligation of the Client to SOUTH VAC for Services – that have previously been supplied and that will be supplied in the future by SOUTH VAC to the Client.
- 1.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which SOUTH VAC may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 1.3(a)(i) or 1.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, SOUTH VAC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing anything charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of SOUTH VAC;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services (account) in favour of a third party without the prior written consent of SOUTH VAC;
- 1.4 SOUTH VAC and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 1.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 1.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 1.7 Unless otherwise agreed to in writing by SOUTH VAC, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 1.8 The Client shall unconditionally ratify any actions taken by SOUTH VAC under clauses 1.3 to 1.5.
- 1.9 Subject to any express provisions to the contrary (including those contained in this clause 1) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA

2. Privacy

- 2.1 The Client agrees for SOUTH VAC to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by SOUTH VAC.
- 2.2 The Client agrees that SOUTH VAC may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (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
 - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 2.3 The Client consents to SOUTH VAC being given a consumer credit report to collect overdue payment on commercial credit.
- 2.4 The Client agrees that personal credit information provided may be used and retained by SOUTH VAC for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 2.5 SOUTH VAC may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 2.6 The information given to the CRB may include:
 - (a) personal information as outlined in 2.1 above;
 - (b) name of the credit provider and that SOUTH VAC is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and SOUTH VAC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of SOUTH VAC, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 2.7 The Client shall have the right to request (by e-mail) from SOUTH VAC:
 - (a) a copy of the information about the Client retained by SOUTH VAC and the right to request that SOUTH VAC correct any incorrect information; and
 - (b) that SOUTH VAC does not disclose any personal information about the Client for the purpose of direct marketing.
- 2.8 SOUTH VAC will destroy personal information upon the Client’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 2.9 The Client can make a privacy complaint by contacting SOUTH VAC via e-mail. SOUTH VAC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

3. Price and Payment

3.1 Subject SOUTH VAC'S Rates Schedule the Price is to be at SOUTH VAC's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by SOUTH VAC to the Client in respect of Services performed; or
- (b) SOUTH VAC's quoted Price (subject to clause 3.2) which shall be binding upon SOUTH VAC provided that the Client shall accept SOUTH VAC's quotation in writing within thirty (30) days of the date of the quotation.

3.2 SOUTH VAC reserves the right to change the Price:

- (a) if a variation to the Services which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to site accessibility, availability of machinery, safety considerations, prerequisite work by a third party not completed or up to suitable standards, or hidden pipes, and wiring in walls, asbestos removal, changes in soil structure or hardness, presence of rock or debris etc) which are only discovered on commencement of the Services; or
- (d) In the event of increases to SOUTH VAC in the cost of labour which are beyond SOUTH VAC's control.
- (e) If the Client gives SOUTH VAC incorrect information about the job/specifications they require SOUTH VAC's Services for.

3.3 Variations will be charged for on the basis of SOUTH VAC's quotation, and will be detailed in writing, and shown as variations on SOUTH VAC's invoice. Payment for all variations must be made in full at the time of their completion.

3.4 At SOUTH VAC's sole discretion a deposit of up to 50% of the quotation amount may be required prior to the commencement of any services.

3.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by SOUTH VAC, which may be:

- (a) on completion of the Services; or
- (b) before commencement of the Services; or
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by SOUTH VAC.

3.6 Payment may be made by, cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and SOUTH VAC.

3.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SOUTH VAC nor to withhold payment of any invoice because part of that invoice is in dispute.

3.8 Unless otherwise stated the Price includes GST. In addition to the Price, the Client must pay to SOUTH VAC an amount equal to any GST SOUTH VAC must pay for any supply by SOUTH VAC under this or any other contract of the sale of any materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3.9 The price work is based on being carried out between 6 am to 6 pm on Mondays to Fridays, The Price will vary should work be required to be carried out between 6 pm and 6 am and or on weekends and public holidays.

4. Default and Consequences of Default

4.1 SOUTH VAC reserves the right to suspend or withdraw credit facilities for any reason and at any time without notice

4.2. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 5.0% per calendar month and interest shall be calculated monthly at such a rate after as well as before any judgment.

4.3 If the Client owes SOUTH VAC any money the Client shall indemnify SOUTH VAC from and against all costs and disbursements incurred by SOUTH VAC in recovering the debt including but not limited to internal administration fees, collection agent commission, legal costs on a solicitor and own client basis, SOUTH VAC's contract default fee, and bank dishonour fees. Administration fees are charged at \$40 per calendar month for overdue invoices.

4.4 Further to any other rights or remedies SOUTH VAC may have under this contract, if a Client has made payment to SOUTH VAC, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SOUTH VAC under this clause 4 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

4.5 Without prejudice to SOUTH VAC's other remedies at law SOUTH VAC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SOUTH VAC shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to SOUTH VAC becomes overdue, or in SOUTH VAC's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by SOUTH VAC;
- (c) the Client becomes insolvent or bankrupt, 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

5. Security and Charge

5.1 In consideration of SOUTH VAC agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

5.2 The Client indemnifies SOUTH VAC from and against all SOUTH VAC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SOUTH VAC's rights under this clause.

5.3 The Client irrevocably appoints SOUTH VAC and each director of SOUTH VAC as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 5 including, but not limited to, signing any document on the Client's behalf.

6. Deemed Receipt of Payment

6.1 Receipt by SOUTH VAC 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 recognised.

7. Risk

7.1 Without prejudice to either parties' rights under all relevant legislations in South Australian regulations, both parties agree that:

- (a) In the event that we are unable to get sign off on the day of finishing the work, and if SOUTH VAC do not receive a written dispute within 3 working days, it will be considered that work has been completed to satisfaction.
- (b) In the event that we receive a dispute within the nominated time, the Customer and SOUTH VAC will initially use all reasonable endeavours to resolve any dispute arising under the agreement within 10 business Days of a party being advised by written notice of such a dispute.
- (c) In the event that the parties are unable to resolve the dispute within the timeframe specified, the parties may either agree to refer the matter to mediation or some other form of alternative dispute resolution or commence collections and/or legal proceedings
- (d) To the extent possible, both parties shall continue to comply with their obligations under the Terms and Conditions, whilst dispute is being addressed by the procedure as set out here.
- (e) Nothing in this agreement shall prevent SOUTH VAC from seeking injunctive relief at any time if it is deemed necessary by SOUTH VAC.

7.4 The plans, specifications (including CAD plans) and other information provided by the Client to SOUTH VAC are accurate. The Client acknowledges and agrees that in any event's that plans, specifications (including CAD plans) or information provided by the Client are inaccurate:

- (a) SOUTH VAC accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. This includes customer or subcontractor demobilization costs due to incorrect information supplied to South Vac;
- (b) SOUTH VAC is entitled to suspend or terminate the supply of Services to the Client if there is a material change to the scope of Services as a result of inaccurate plans, specifications or other information or should any unforeseen circumstance occur during the Services;
- (c) the Client shall be liable for SOUTH VAC's costs of de-mobilisation or re-mobilisation of any plant, equipment or staff to or from the site, upon the re-commencement of the Services at the site, if applicable; and
- (d) SOUTH VAC will not be liable to the Client for any loss or damage the Client suffers because SOUTH VAC has exercised its rights under this clause.

7.5 If the trench or pothole is to be left open after SOUTH VAC has completed the job, safety measures will be put in place to comply with Excavation Codes of Practice. The Client will be required to take ownership and responsibility for the safety measures put in place. To comply with Excavation Codes of Practice the

safety measures must remain in place as set up by SOUTH VAC Staff and not changed or removed until the trench or pothole is backfilled. SOUTH VAC is not responsible for damages or injury to people or property if the safety measures are removed or changed by the Client.

7.6 The Client accepts that SOUTH VAC trucks are heavy vehicles. If SOUTH VAC is required to park on a driveway, brick pavers or other private property to undertake the job required by the client, SOUTH VAC and its servants, agents and employees are not responsible for any damages that may occur due to the weight of the vehicle.

7.7 SOUTH VAC shall not be liable whatsoever for any loss or damage to that is caused by any other tradesmen.

7.6 Where the Client has supplied any materials required for SOUTH VAC to complete the Services, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. SOUTH VAC shall not be responsible for any defects in the materials, any loss or damage to the Services (or any part thereof), howsoever arising from the use of materials supplied by the Client.

8. Delivery

8.1 Should SOUTH VAC be required to deliver any materials to the Client the cost of any such delivery is in addition to the price as quoted.

9. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

9.1 The Client must inspect all materials on delivery (or the Services on completion) and must within one (1) day of delivery notify SOUTH VAC in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the materials as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SOUTH VAC to inspect the materials or to review the Services provided.

9.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

9.3 SOUTH VAC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

9.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SOUTH VAC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. SOUTH VAC's liability in respect of these warranties is limited to the fullest extent permitted by law.

9.5 If the Client is a consumer within the meaning of the CCA, SOUTH VAC's liability is limited to the extent permitted by section 64A of Schedule 2.

9.6 If SOUTH VAC is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then SOUTH VAC may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

9.7 If the Client is not a consumer within the meaning of the CCA, SOUTH VAC's liability for any defective or damaged materials is:

- (a) limited to the guarantee of good work provided to the Client by SOUTH VAC at SOUTH VAC's sole discretion;
- (b) limited to any warranty to which SOUTH VAC is entitled, if SOUTH VAC did not manufacture the materials;
- (c) otherwise negated absolutely.

9.8 Subject to this clause 9, returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 16; and
- (b) SOUTH VAC has agreed that the Services are defective.

9.9 Notwithstanding clauses 9.1 to 9.9 but subject to the CCA, SOUTH VAC shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of the Client failing to properly maintain any hole or trench or Services provided by SOUTH VAC.

10. Cancellation

10.1 If SOUTH VAC is not required the Client must give SOUTH VAC a **12 hours minimum notice to cancel the booking**. For example, if SOUTH VAC is required to be on site at 6.00am, the Client must contact SOUTH VAC no later than 6.00pm on the previous day. The Client can cancel by phoning Natasha 0408085502 or Michael 0437790351. Please leave a message if either person is unable to answer. **Contact by phone is the only acceptable form of cancellation**. Advising of a cancellation via email, letter or text is not an acceptable form of communication.

10.2 If less than 12 hours are given to cancel a booking, then the Client will be charged a cancellation fee will be equal to the minimum 4-hour hire for the truck requested. The cancellation fee will be charged to the person or business who requested the hire. The terms for the cancellation fee are 30 days and are subject to debt recovery if not paid.

10.3 Without prejudice to any other remedies SOUTH VAC may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SOUTH VAC may suspend or terminate the supply of Services to the Client.

10.4 SOUTH VAC will not be liable to the Client for any loss or damage the Client suffers because SOUTH VAC has exercised its rights under this clause.

10.5 SOUTH VAC may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice SOUTH VAC shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to SOUTH VAC for Services already performed. SOUTH VAC shall not be liable for any loss or damage whatsoever arising from such cancellation.

10.6 In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by SOUTH VAC as a direct result of the cancellation (including, but not limited to, any loss of profits).

11. Intellectual Property

11.1 Where SOUTH VAC has designed, drawn or developed Services for the Client, then the copyright in any designs and drawings and documents shall remain the property of SOUTH VAC. Under no circumstances may such designs, drawings and documents be used without the express written approval of SOUTH VAC.

11.2 The Client warrants that all designs, specifications or instructions given to SOUTH VAC will not cause SOUTH VAC to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SOUTH VAC against any action taken by a third party against SOUTH VAC in respect of any such infringement.

11.3. The Client agrees that SOUTH VAC may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which SOUTH VAC has created for the Client.

12. Jurisdiction

12.1 This agreement shall be construed in accordance with laws of the **State of South Australia** and, where applicable the Commonwealth of Australia and the Client submits to the non-exclusive jurisdiction of the courts in **South Australia**.

12.2 SOUTH VAC shall otherwise have the exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

13. Acceptance

13.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Services.

13.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and SOUTH VAC.

13.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

14. Errors and Omissions

14.1 The Client acknowledges and accepts that SOUTH VAC shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by SOUTH VAC in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by SOUTH VAC in respect of the Services.

14.2 In the event such an error and/or omission occurs in accordance with clause 3.1, is not attributable to the negligence and/or willful misconduct of SOUTH VAC; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

15. Change in Control

15.1 The Client shall give SOUTH VAC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by SOUTH VAC as a result of the Client's failure to comply with this clause.

16. Provision of the Services

16.1 Subject to clause 16.2 it is SOUTH VAC's responsibility to ensure that the Services start as soon as it is reasonably possible.

16.2. The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that SOUTH VAC claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond SOUTH VAC's control, including but not limited to any failure by the Client to:

- (a) make the selection; or
- (b) have the site ready for the Services; or
- (c) notify SOUTH VAC that the site is ready.

16.3 At SOUTH VAC's sole discretion, the cost of travel is included in the Price.

16.4 Any time specified by SOUTH VAC for delivery of the Services is an estimate only and SOUTH VAC will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In an event that SOUTH VAC is unable to supply the Services as agreed solely due to any action or inaction of the Client, then SOUTH VAC shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

16.5 SOUTH VAC is not responsible for how vehicle or equipment failures affect the outcome of the Services for which SOUTH VAC is engaged or for the effect on the services of other trades or sub-contractors engaged for the same job/project.

17. Client Responsibilities

17.1 It is the intention of SOUTH VAC and agreed by the Client that it is the responsibility of the Client to provide and have scaffolding erected, trenching, shoring and safety measures to enable the Services to be undertaken (where in SOUTH VAC's opinion it is deemed necessary). It is also agreed that all scaffolding erected, trenching, shoring and safety measures will comply with industry safety standards and that any person erecting the scaffolding, trenching, shoring and implementing safety measures shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.

17.2 The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the Services and agrees that SOUTH VAC shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.

18. Access

The Client shall at all times, ensure that SOUTH VAC has clear, free access to the site to enable them to undertake the Services. SOUTH VAC 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 SOUTH VAC.

19. Compliance with Laws

19.1 The Client and SOUTH VAC shall comply with the provisions of all statutes, regulations and by laws of government, local and other public authorities that may be applicable to the Services, including, but not limited to, applicable Building, Construction and Excavation Codes.

19.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

19.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

20. Building and Construction Industry Security of Payments Act 2009

20.1 At SOUTH VAC's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.

20.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.

21. Service of Notices

21.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

21.2. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. Trusts

22.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not SOUTH VAC may have notice of the Trust, the Client covenants with SOUTH VAC as follows:

- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Client will not without consent in writing of SOUTH VAC (SOUTH VAC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

23. Force Majeure

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.

24. General

24.1 The failure by either 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. 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.

24.2 Subject to clause 14, SOUTH VAC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SOUTH VAC of these terms and conditions (alternatively SOUTH VAC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).

24.3 SOUTH VAC may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

24.4 The Client cannot licence or assign without the written approval of SOUTH VAC.

24.5 SOUTH VAC may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of SOUTH VAC's sub-contractors without the authority of SOUTH VAC.

24.6 The Client agrees that SOUTH VAC may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for SOUTH VAC to provide Services to the Client.

24.7 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

24.8 SOUTH VAC shall have public liability insurance of at least \$5m. It is the client's responsibility to ensure they are similarly insured.

24.9 This contract is binding upon the parties hereto and upon their respective successors and permitted assigns.

25. Additional Hire Information

25.1 During the course of waste removal time to clear blockages in the vacuum hose due to large sized debris or waste is beyond our control and is part of what is reasonably expected.

25.2 If the trench or pothole is to be left open after SOUTH VAC has completed the job, safety measures will be put in place to comply with Excavation Codes of Practice. The Client will be required to take ownership and responsibility for the safety measures put in place. To comply with Excavation Codes of Practice the safety measures must remain in place as set up by SOUTH VAC employees and not changed or removed until the trench or pothole is backfilled. SOUTH VAC is not responsible for damages or injury to people or property if the safety measures are removed or changed by the Client.

25.3 The Client accepts that SOUTH VAC trucks are heavy vehicles. If SOUTH VAC is required to park on a driveway, brick pavers or other private property to undertake the job required by the client, SOUTH VAC and SOUTH VAC Employees are not responsible for any damages that may occur due to the weight of the vehicle.

25.4 SOUTH VAC is not responsible for how vehicle or equipment failures affect outcome of the service we are hired for or for the effect on the services of other trades or sub-contractors engaged for the same job/project.

25.5 When you hire our services you/your company is of the opinion that SOUTH VAC has the necessary qualifications, experience and abilities to provide services requested.

26. SOUTH VAC Rates Schedule:

26.1 Minimum charge is 4 hours. The 4-hour minimum hire includes travel and the time taken to dispose of waste (off-site waste disposal charge is additional).

26.2 Wet hire only - 1- 2 operators supplied to suit the job requirements.

26.3 Quotes for Hydro Excavation and Waste Disposal are an ESTIMATE ONLY. SOUTH VAC can only estimate the time required/waste disposal cost for the job depending on the information they receive from the Client or from a site inspection. The invoice for the completed job may vary from the quoted price depending on unexpected changes in soil structure/debris, weather conditions or other external interruptions beyond SOUTH VAC's control. If extra charges are required, the Client will be advised immediately on site and the Client can decide whether to extend the time required to finish the job.

26.4 Waste Disposal off-site is charged at various rates which are determined by the Waste Disposal Companies we use. The Client will be advised of the waste disposal cost before the job commences.

26.5 Our hourly rate will apply for the time taken for on-site and off-site waste disposal.

26.6 Travel from the SOUTH VAC depot to the job location and return to the SOUTH VAC depot will be charged at the hourly rate.

26.7 Any additional services requested by the Client on site that were not on the original quote or agreement will be charged at the appropriate hourly rates as determined by SOUTH VAC.

26.8 SOUTH VAC does not offer discounts on the hourly rates. Once the Client engages our services the Client will be invoiced at the completion of the job the appropriate hourly rates as determined by SOUTH VAC.

26.9 Any account more than 30 days overdue may be forwarded to a collection agency and you will be liable for collection charges and associated legal costs - Security of Payments Act SA 2009.

I have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.

I warrant by signature attached or overleaf that the information given in support of this application is true and correct. I further warrant that I am authorized to sign on behalf of the Client and to bind the Client in contract.

Completing a Credit Application does not infer that credit will be granted.

The document must be completed in full, with no alterations or deletions. Any such alterations or deletions will void the application and a new form will need to be completed.

Small Business applicants are advised that, should any of the Terms or Conditions contained herein be considered by them to be 'unfair', they should contact SOUTH VAC Pty Ltd to further discuss and negotiate before proceeding with the application.

SOUTH VAC Pty Ltd reserves the right to refuse credit to any Applicant without explanation.

SOUTH VAC Pty Ltd reserves the right to suspend or withdraw credit facilities at any time without notice. Special Note: if the Client acts as, or is part of, a Trust/Nominee Entity then the provision of personal guarantee/s from the Trust Beneficiary/Beneficiaries is required to process this application.