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Terms of Contract

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Approved by: W. Arthur

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Treescape Australasia Pty Ltd (**Treescape**) will perform the work specified overleaf (page 1) in a competent manner on the following terms.

A. Expiry

If, without Treescape's default, Treescape has not commenced work within 3 months of making this contract, Treescape may reasonably re-price the work, or cancel the contract without any liability.

B. Hidden obstructions

It is assumed that trees to be felled are free from metal, stone and other hidden obstructions. If it is impossible to fell a tree in the normal manner, Treescape may reasonably re-price the work accordingly.

C. Stump grinding

Stump grinding involves the removal of the tree stump to a depth of 150mm, but does not include the removal of lateral roots or stump chippings.

D. Firewood

If Treescape is required to supply firewood, the firewood will be left on site tidily stacked. Ringing (or girdling) is excluded.

E. Transplanting

If Treescape is required to relocate any tree, Treescape will use best practice methods to do so, but cannot guarantee the survival of any relocated tree.

F. Site access

You must provide Treescape with reasonable access to the site, and acknowledge Treescape may need to transport heavy machinery that could cause damage to driveways, paths or other access ways.

G. Site information and permits

You are responsible for:

- identifying all private covenants and boundaries;
- identifying all underground pipes, wires and cables;
- obtaining written permission from all tree owners;
- identifying historic sites and areas of archaeological, scientific, environmental, religious or cultural significance;
- obtaining all necessary consents, permits, licences, VPO permits and similar approvals (including, for example, those required under environmental, traffic and rail transport laws); and
- informing Treescape in writing about those matters and supplying Treescape with all related documentation (including a plan showing the exact location of relevant boundaries and underground structures) a reasonable time before the work is to be performed.

If any information about any such matter comes to Treescape's attention after the contract is made, Treescape may reasonably re-price the work. Upon your written request, Treescape will call Dial Before U Dig before commencing work, but all related costs must be paid by you.

H. Payment

You must pay Treescape on completion of all work or, for government or approved business customers, within 7 days of receiving an invoice. If Treescape does not complete all work for any reason (including the exercise of rights under clause K), you must pay the specified price if any, and otherwise a reasonable price, for the work done within 7 days of receiving an invoice.

You may not deduct, withhold or set off any amount for any reason whatsoever. Credit card payments attract a 2% processing fee. Time is of the essence in respect of payments. Overdue amounts attract interest at the Queensland Law Society standard default contract rate calculated daily until paid in full.

Unless expressly stated otherwise, amounts specified in this contract are exclusive of any goods and services tax. Any such tax is payable by the recipient of the goods and/or services, subject to receipt of any required tax invoice.

I. Re-scheduling or cancellation fee

If you re-schedule or cancel any work on less than 12 hours notice, an administration fee of \$100 plus Treescape's costs and expenses (including internal costs and expenses) thrown away are payable on receipt of an invoice.

J. Disputes

To the extent permitted by law and unless agreed otherwise in writing, you must raise any complaint or dispute concerning any goods or services within 7 days of their delivery or performance. Otherwise, you may not raise any complaint or dispute connected with them.

K. Suspension and termination

Treescape may suspend the contract, without any liability whatsoever, if you breach any obligation or anything happens or fails to happen (not due to Treescape's default) that Treescape reasonably considers will or may prevent or delay Treescape in being reasonably able to perform the contract, in Treescape's reasonable opinion there is any hazard or danger to the safety of any person, building or other property, or the customer dies, is wound up or is insolvent. If the matter is capable of being remedied and is not remedied within a reasonable time, or is not capable of being remedied, Treescape may terminate the contract without any liability whatsoever.

L. Indemnity

You indemnify Treescape for all fees, costs, charges, expenses, losses and damages suffered or incurred by Treescape connected with any breach of clause G by you and/or Treescape's enforcement of its rights and/or remedies relating to the contract (including legal costs on an indemnity basis as those costs are incurred).

M. Insurance cover

Treescape holds General and Products Liability Insurance cover.

N. Exclusions and limitations

To the extent permitted by law:

- any condition, warranty, right or liability which would otherwise be implied in this contract or protected by law, and any application of the *United Nations Conventions on Contracts for the International Sale of Goods*, is excluded;
- pursuant to section 64A of the *Australian Consumer Law* (ACL), in respect of any goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Treescape's liability for failure to comply with any ACL guarantee is limited (unless you establish it is not fair or reasonable) at Treescape's option to:
 - in relation to goods, replacement, repair or supply of equivalent goods (or payment therefore); and
 - in relation to services, re-supply of the services (or payment therefore);
- Treescape shall have no liability in respect of:
 - any damage caused to driveways, paths or other access ways;
 - unsuccessful relocation of any tree;
 - damages or loss relating to the customer's breach of clause G;
 - any loss of profits, revenue, data, opportunity, goodwill or anticipatory profits, loss related to business interruption, or any indirect or consequential loss, cost (including legal cost), expense and/or liability however arising; or
 - any damages or loss relating to any head contract between the customer and a third party unless Treescape has seen and agreed in writing to the relevant terms;
- Treescape's maximum liability in connection with this contract is limited to \$2,000,000 in the aggregate; and
- in respect of any claim between the parties under or in connection with this contract, the parties agree that the operation of the *Civil Liability Act 2003* (Qld) and of any laws having a similar effect (in the Commonwealth and/or any State or Territory of Australia and/or elsewhere) are excluded and have no application or effect insofar as any of them would apportion liability to Treescape which would not have been so apportioned but for such laws, except clauses N(c) and N(d) do not apply to the extent Treescape's liability is due to personal injury or death, or Treescape's intellectual property or moral rights infringement, fraud, wilful misconduct or wilful default.

O. Confidentiality

You must keep confidential all information relating to Treescape's business (including pricing and information concerning any other customer) or the business of any of its related bodies corporate, and may use such information only for the purposes of this contract. This clause does not apply to information publicly available without breach of this clause, to disclosure to professional advisers, related bodies corporate or bona fide prospective purchasers of your assets or shares who have a need to know and are subject to a similar obligation of confidence, or to disclosure required by law.

P. Personal information

If Treescape discloses any personal information (as defined in the *Privacy Act 1988* (Cth)) to you outside Australia, you must not breach the Australian Privacy Principles (APP) other than APP 1 in relation to the information.

Q. Intellectual property

You obtain no intellectual property rights under this contract. All intellectual property created by Treescape and/or its employees in relation to this contract is Treescape's property.

R. Entire agreement and amendments

This contract constitutes the entire agreement of the parties as to its subject matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, in connection with it. The contract may only be amended in writing signed by all parties.

S. Severability

If any provision of the contract is held invalid, unenforceable or illegal, the remainder of the contract will remain enforceable to the greatest extent permitted by law.

T. Rights cumulative

These terms do not limit any other rights and remedies available to any party. Clauses J, L, O and P survive termination or expiration of this contract.

U. Governing law and jurisdiction

This contract will be governed by and construed according to the laws of the State of Queensland. The parties irrevocably submit to the jurisdiction of the courts of Queensland.