

Terms and conditions

1. Key Conditions

- (a) While DWB Service Locating is required to perform the Services to a good professional standard and with all due care and skill, it cannot guarantee the precise accuracy of the locations of Assets, due to matters beyond its reasonable control, including but not limited to soil conditions and Asset congestion. The Client acknowledges and agrees that is responsible for proving the location of an Asset which has been located by DWB Service Locating, in accordance with the excavation requirements of the relevant Asset Owner. This will generally include physically proving the underground Asset by exposing the Asset using non-destructive digging techniques.
- (b) Locatable Assets are limited to those that are indicated on plans, through visual inspection, have suitable conductive properties (including trace wires) or able to be identified visually and successfully traced by rodding. Where an Asset is shown on plans but is unable to be located by DWB Service Locating, this will be noted in the job notes provided to the Client.
- (c) The Client acknowledges and agrees that it is responsible for obtaining the necessary written consents or permits from the relevant Asset Owner(s) prior to the commencement of any construction / excavation works on the Site, and DWB Service Locating is not responsible for obtaining such consents or permits.
- (d) It is the responsibility of the client to obtain written advice from the Asset Owner in relation to its conditions and requirements relating to the carrying out of construction / excavation works near the relevant Asset. The Client acknowledges and agrees it must contact the Asset Owner to obtain such written advice prior to commencing any construction / excavation works near the relevant Asset.
- (e) DWB is not responsible for locating Assets which are located outside the Site.
- (f) In the event the Client is unable to prove an Asset which has been the subject of a prior location performed by DWB Service Locating, the Client must contact DWB Service Locating, which will be responsible for a further Site visit in order to attempt to investigate the reason(s) for the discrepancy. This will be at the Client's cost in accordance with the Fees payable for an initial Site visit, unless the reason for the follow up visit is DWB Service Locating's failure to comply with its obligations under these terms and conditions.

2. Engagement

- (a) The Client is taken to have engaged DWB Service Locating to perform the Services if it signs or agrees to an engagement form, issues a purchase order referring to the Services, or through any other conduct whereby the Client directs DWB Service Locating to proceed with the Services.

- (b) Pursuant to an engagement under clause 2(a), the Client appoints DWB Service Locating to perform the Services for the Client under these terms and conditions, and DWB Service Locating accepts this engagement.
- (c) If there is any inconsistency between any of these terms and conditions and a Client purchase order, the following order of precedence will apply to the extent of the inconsistency:
 - (i) these terms and conditions; and
 - (ii) the Client's purchase order.
- (d) The Client must not include or seek to include in a purchase order any terms which are inconsistent with these terms and conditions or which limit or negate (whether in whole or in part) the rights of DWB Service Locating under these terms and conditions (**Inconsistent Terms**), unless the Client has first notified DWB Service Locating in writing of the nature of and reasons for the proposed Inconsistent Terms and DWB Service Locating has agreed to them in writing. If the Client includes Inconsistent Terms in a purchase order other than in accordance with this clause 2(d), those Inconsistent Terms will be of no effect and will be severed from the purchase order.

3. Fees

In consideration of DWB Service Locating's performance of the Services, the Client will pay to DWB Service Locating the Fees which will be the total of the following amounts:

- (a) Standard Fee: \$350 plus GST, which is inclusive of up to 1 hour's work performing Services on-site;
- (b) Hourly Rate Fee: \$180 plus GST per hour for all work performing the Services on-site beyond the first hour included in the Standard Fee, charged in 15-minute increments, rounding up;
- (c) Travel Fee: \$3.00 plus GST per kilometre each way for any site located beyond a 30 kilometre radius from the Meredith, Victoria 3333 General Post Office. For example, if the site is located 80 kilometres from this location, the travel fee will be \$300 plus GST.

4. DWB Service Locating obligations

- In providing the Services, DWB Service Locating must:
- (a) provide the Services within a reasonable time, or by such later date(s) as agreed;
 - (b) subject to clause **Error! Reference source not found.**(a), perform the Services to a good professional standard and with all due skill and care; and
 - (c) following the conclusion of the performance of the Services for the relevant Site, provide the Client with job notes which will assist the Client in locating the services on the Site.

5. Client obligations

- (a) Prior to DWB Service Locating commencing performance of the Services, the Client must carry out an enquiry with Before You Dig Australia in relation to the Site, obtain all documentation which is provided in response to that enquiry (**Documentation**) and provide to DWB Service Locating copies of all Documentation. The Client

- acknowledges and agrees that DWB Service Locating cannot commence performance of the Services unless and until it has received copies of all Documentation.
- (b) The Client must provide to DWB Service Locating all reasonable assistance requested by DWB Service Locating, including the provision of documentation and participation in meetings, so that DWB Service Locating can properly and efficiently perform the Services.
 - (c) The Client must not, for the duration that DWB Service Locating performs Services under these terms and conditions for the Client and for 12 months following the conclusion of such performance, directly or indirectly, solicit, canvass, induce, persuade or encourage any DWB Service Locating employee, with whom the Client has had a direct working relationship, to leave their employment with, or to cease providing services to, DWB Service Locating.
 - (d) The Client must not, for the duration that DWB Service Locating performs Services under these terms and conditions for the Client and for 12 months following the conclusion of such performance, accept an approach or application from any DWB Service Locating employee (whether or not such a person remains employed with DWB Service Locating at the relevant time), with whom the Client has had a direct working relationship, to work with the Client.
 - (e) In relation to the Site, the Client must:
 - (i) comply with all Laws and Regulatory Requirements applicable to the work performed by DWB Service Locating Personnel, including all employment, anti-discrimination, anti-bullying and work health and safety legislation;
 - (ii) provide to the DWB Service Locating Personnel such information, induction, instruction, training and supervision as is necessary to enable the DWB Service Locating Personnel to work in a way that is safe and without risk to health;
 - (iii) ensure that the Site is, so far as reasonably practicable, safe and free from risks to health and safety;
 - (iv) ensure that the Client has adequate systems in place, and properly instructs and supervises the DWB Service Locating Personnel, in relation to the safe use handling, storage or transport of any plant, equipment or substances used in connection with the work to be performed by the DWB Service Locating Personnel;
 - (v) ensure that the DWB Service Locating Personnel are supplied with and use or wear, personal protective equipment and clothing appropriate to the work to be performed by the DWB Service Locating Personnel; and
 - (vi) ensuring that the DWB Service Locating Personnel are not bullied, harassed or discriminated against;
 - (vii) immediately notify DWB Service Locating of all work health and safety incidents which relate (or may relate) to the performance of the Services or which involve (or may involve) DWB Service Locating Personnel;
 - (viii) fully cooperate with, and ensure that all Client personnel cooperate with, any investigation conducted by DWB Service Locating into any incident which is required to be notified to any authority under work health and safety legislation;
 - (ix) ensure it holds public liability insurance in the amount of \$20 million for each claim in each claim year ending 30 June which insures the Client for loss of, damage to or loss of use of any property and the bodily injury, disease, illness (including mental illness) or death of any person in relation to the Client's operations at the relevant site; and
 - (x) ensure it holds adequate workers compensation insurance, as required by Law.

6. Invoicing, Fees and payment

- (a) In consideration of DWB Service Locating performing the Services, the Client will pay to DWB Service Locating the Fees.
- (b) DWB Service Locating will issue the Client with a tax invoice for any Services for which it requires payment of the Fees, at the completion of the performance of the Services for a particular site.
- (c) Subject to clause 6(d), the Client will make payment in respect of each tax invoice for the Fees issued by DWB Service Locating within 14 days following the date of each invoice.
- (d) If the Client, acting reasonably, disputes the amount or calculation of any Fees invoiced by DWB Service Locating, the Client must pay any undisputed amounts in accordance with these terms and conditions and may withhold payment of the disputed amounts pending resolution of the dispute.
- (e) The Client is not entitled to set off any amount owed to DWB Service Locating against any amount payable by DWB Service Locating to the Client at any time.
- (f) If the Client does not pay an amount due under these terms and conditions on time, the Client must pay to DWB Service Locating interest on the overdue amount:
 - (i) from time to time until that amount is paid (with interest accruing on a daily basis); and
 - (ii) at the rate set from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

7. GST

- (a) Words and expressions used in this clause 7 which are defined in the GST Act have the same meanings given to them in the GST Act.
- (b) The consideration for any supply made under or in connection with these terms and conditions does

not include an amount for GST, unless it is expressly stated to be inclusive of GST.

- (c) If GST is or becomes payable on any supply made under or in connection with these terms and conditions (not being a supply for which the consideration is expressly stated to be inclusive of GST), the party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply.
- (d) If the amount for GST recovered by a party under clause 7(c) differs from the amount of GST payable by the party or its representative member on the supply, the amount of the difference must be paid to or refunded by the party (as the case requires).

8. Limited and excluded liability

- (a) Subject to clauses 8(b) and 8(c) and to the extent permitted by all other applicable laws, DWB Service Locating's liability for damages to the Client under, or in connection with, these terms and conditions and/or the Services (excluding in relation to DWB Service Locating's failure to comply with a Consumer Guarantee) will not exceed the Liability Cap.
- (b) Subject to clause 8(c), and to the extent permitted by all applicable Laws, neither party will be liable to the other for damages under, or in connection with, these terms and conditions, in respect of any Consequential Loss.
- (c) The limits on and exclusions of liability in clauses 8(a) and 8(b) do not apply in relation to the liability of DWB Service Locating in connection with any personal injury, death or DWB Service Locating's grossly negligent or fraudulent acts or omissions.
- (d) DWB Service Locating's liability for damages to the Client for failing to comply with a Consumer Guarantee is limited to:
 - (i) supplying the relevant services again; or
 - (ii) DWB Service Locating's payment to the Client of the cost of having the relevant services supplied again.
- (e) If DWB Service Locating's performance of the Services is impacted by a Force Majeure Event, it is not liable (to the extent permitted by all applicable Laws) for any failure or delay in performing any impacted Services, to the extent the failure or delay is caused by the Force Majeure Event.

9. General

- (a) The relationship of DWB Service Locating and the Client under these terms and conditions is that of principal and independent contractor. These terms and conditions do not make either party a joint venturer, partner, employee or agent of the other.
- (b) If any provision of these terms and conditions is void, voidable by a party, unenforceable or illegal it is to be read down so as to be valid and enforceable or, if it cannot be read down, the provision is, where possible, the offending words are to be severed from these terms and conditions without affecting the validity or enforceability of the

remaining provisions (or parts of those provisions) of these terms and conditions.

- (c) These terms and conditions are the entire agreement between the parties about its subject matter and supersedes all previous communications, representations or agreements between the parties on the subject matter.
- (d) No failure to exercise or delay in exercising any right given by or under these terms and conditions to a party constitutes a waiver and the party may still exercise that right in the future. No single or partial exercise of any right precludes any other or further exercise of that or any other right.
- (e) Any waiver of any provision of these terms and conditions or a right created under it must be in writing signed by the party giving the waiver and is only effective to the extent set out in that written waiver.
- (f) These terms and conditions are governed by the Law in force in the State of Victoria and the Commonwealth of Australia.
- (g) The parties submit to the non-exclusive jurisdiction of courts of the State of Victoria and the Commonwealth of Australia including the Federal Court and any courts that may hear appeals from those courts about any proceedings in connection with these terms and conditions.

10. Definitions

In these terms and conditions:

Asset means an underground utility service or asset.

Asset Owner means the owner or entity responsible for an Asset.

Authorised Persons means in relation to a party:

- (a) the directors, secretary or any other person appointed to act as an authorised officer of that party;
- (b) the employees of that party;
- (c) the legal, financial and other advisers of that party; and
- (d) the respective officers and employees of those legal, financial and other advisers.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Client means the person or entity which engages DWB Service Locating to perform the Services under these terms and Conditions.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Consumer Guarantees mean the consumer guarantees contained in Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and which applies as a law of Victoria pursuant to section 8 of the Australian Consumer Law and Fair Trading Act 2012 (Vic).

Corporations Act means the *Corporations Act 2001* (Cth).

Fees mean the fees payable by the Client to DWB Service Locating in consideration of DWB Service Locating's performance of the Services, calculated in accordance with clause 3.

Force Majeure Event means any act, event or cause, other than lack of funds, affecting a party that is outside that party's reasonable control, including, but not limited to:

- (a) war, acts or threats of terrorism, riots, revolutions, civil war, acts or threats of sabotage, national emergency (whether in fact or law), imposition of martial law, government requisition or any unlawful act against public order or authority;
- (b) adverse weather conditions, acts of God and destruction by natural disasters including landslides, earthquakes, tsunamis, fires, storms, cyclones and floods;
- (c) epidemics, pandemic, quarantines, radiation and radioactive contamination; or
- (d) boycotts, strikes and other labour difficulties, involving employees, contractors or agents of third parties.

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.

DWB Service Locating means DWB Service Locating Pty Ltd (ACN 668 778 425).

DWB Service Locating Personnel means an employee, officer, agent or contractor of DWB Service Locating.

Law means the law in force in the jurisdiction in which the Services are to be performed, including common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances or any other legislative or regulatory measures, including any amendment, modification or re-enactment of them.

Liability Cap means the total amount of Fees invoiced (or which remain to be invoiced) to the Client in relation to Services performed in relation to the relevant Site.

Loss means liabilities, losses, damages and costs (including legal costs on a full indemnity basis whether incurred by or awarded against a party) and Consequential Losses including those arising out of any third party claim.

Regulatory Requirement means a requirement of, or imposed or administered by, any applicable law or regulation or any Government Agency or regulator having jurisdiction over a party or the Services (including under a code of conduct or regulatory guideline that applies to a party).

Related Entity has the meaning given in the Corporations Act.

Site means the land or property(ies) in relation to which the Services are performed by DWB Service Locating.

Services mean the locating of Assets on the Site which is performed by DWB Service Locating under these terms and conditions.

11. Interpretation

In these terms and conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;
- (d) a reference to a document or instrument, including these terms and conditions, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (e) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (f) no provision of these terms and conditions will be construed to the disadvantage of a party merely because that party was responsible for the preparation of these terms and conditions or the inclusion of the provision in these terms and conditions;
- (g) unless otherwise stated, a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) all monetary amounts are in Australian dollars, unless otherwise stated and a reference to payment means payment in Australian dollars;
- (i) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day; and
- (j) when counting a period of days before or after a given day or the day of a particular act or event, the given day or day of the particular act or event, as applicable, is excluded and the last day of the period is included.