

## TRANEN PTY LTD TRADING AS TRANEN REVEGETATION SYSTEMS - CONDITIONS OF ENGAGEMENT

- 1 Tranen Revegetation Systems (Tranen) shall provide to the Client the services described in the accompanying proposal, which is open for acceptance for 30 days from the date of issue, unless otherwise stated in the proposal. The agreed services are herein after referred to as "the brief".
- 2 In providing the services, Tranen shall exercise the degree of skill, care and diligence normally exercised by contractors and/or consultants in similar circumstances. Tranen offers the Client the opportunity to provide feedback regarding the performance of the services at any time.
- 3 The Client shall provide to Tranen, in advance, all information concerning the Client's requirements for the brief, including the location of all underground services. Tranen shall not be liable for any damage or consequential costs caused by incomplete or inaccurate information regarding underground services.
- 4 The Client shall pay to Tranen the fees and reimbursable expenses as set out in the accompanying proposal. Where this Agreement has been entered into or authorised by an Agent (or a person purporting to act as an Agent) on behalf of the Client, the Agent and Client shall be jointly and severally liable for payment of all accounts due to Tranen under this Agreement. Seedlings are normally ordered around 6 months in advance of requirements, to allow sufficient time for them to be grown to sizes suitable for planting. If no schedule of payments is included in the proposal, progress payments may be invoiced monthly, and when seedlings have been ordered, a deposit of 30% of their value may be invoiced on order placement. If the Client has authorised Tranen to order seedlings for a project but the site is not ready for planting in the scheduled planting season due to circumstances outside Tranen's control, at Client request Tranen will endeavour to arrange for the seedlings to be onsold, but should this not be possible, the Client remains responsible for payment to Tranen for all such seedlings which have not been onsold.
- 5 Unless otherwise detailed in the accompanying proposal, GST of 10% is additional, and all monies payable by the Client to Tranen shall be paid within 14 days of receipt of invoice. Monies not paid within that period shall attract interest from the date of invoice until payment at the rate of 1% per month, plus debt collection fee where applicable.
- 6 The liability of Tranen arising out of the performance or non-performance of the services, whether under the law of contract, tort or otherwise, shall be limited to the cost of rectifying the works the subject of the services, or the total value of the accompanying proposal, whichever is the lesser.
- 7 Tranen will be deemed to have been discharged from all liability in respect of the services, whether under the law of contract, tort or otherwise, on the expiration of one year from the completion of the services; the date of invoice in respect of the final amount claimed by Tranen pursuant to Clause 4; or the termination of this Agreement, whichever is the earlier and the Client shall not be entitled to commence any action or claim whatsoever against Tranen (or any employee, agent or sub-consultant of Tranen) in respect of the consulting services after that date.
- 8 The provisions of Clauses 6 and 7 are subject always to the provisions of Part V of the Trade Practices Act 1974 (as amended) and any other law which cannot be excluded, restricted or modified by agreement.
- 9 Copyright in all drawings, reports, specifications, bills of quantity, calculations and other documents provided by Tranen in connection with the project shall remain the property of Tranen.
- 10 Subject to Clause 11, the Client alone shall have a licence to use the documents referred to in Clause 9 for the purposes of completing the brief but the Client shall not use, or make copies of, such documents in connection with any work not included in the brief.
- 11 If the Client is in breach of any obligation to make a payment to Tranen, Tranen may revoke the licence referred to in Clause 10, and the Client shall then cause to be returned to Tranen all documents referred to in Clause 9, and all copies thereof.
- 12 The two parties shall in the first instance attempt to resolve any dispute by negotiation in good faith. In the event that this is unsuccessful, the dispute shall be the subject of adjudication under the WA Construction Contracts Act and Regulations 2004.
- 13 The Client may terminate its obligations under this Agreement:
  - (a) in the event of substantial breach by Tranen of its obligations hereunder, which breach has not been remedied within 30 days of written notice from the Client requiring the breach to be remedied, or
  - (b) upon giving Tranen 60 days written notice of its intention to do so.
- 14 Tranen may suspend or terminate its obligations under this Agreement:
  - (a) in the event of:
    - (i) monies payable to Tranen hereunder being outstanding for more than 60 days;
    - (ii) other substantial breach by the Client of its obligations hereunder, which breach has not been remedied within 30 days of written notice from Tranen requiring the breach to be remedied, or
  - (b) upon giving the Client 60 days written notice of its intention to do so.
- 15 If Tranen considers it appropriate to do so, it may, with the Client's prior approval, which shall not be unreasonably withheld, engage other contractors and consultants to assist Tranen in specialist areas.
- 16 Neither party may assign, transfer or sublet any obligation under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under this Agreement.
- 17 Unless otherwise agreed, Tranen's price is based on the Client providing Tranen with unrestricted access to the site during Tranen's normal working hours of 7 AM to 3 PM Monday to Friday, and if the site is locked, Tranen being loaned the necessary key or keys for the duration of the project.
- 18 Unless otherwise agreed, the success rate of direct seeding operations and the survival rates of plants will not be guaranteed by Tranen. Notwithstanding this Tranen will not be held liable for instances of force majeure which includes but is not limited to: abnormal climatic conditions (ie drought, flooding), unsuitable soil and other site conditions, damage by insects and other pests, wilful and accidental damage, as well as other factors outside of Tranen's control including any identified Client responsibilities.
- 19 All activities to be undertaken by Tranen are itemised in the project costings / quotation, and unless otherwise specified shall form the scope of works. Should quantities change or additional items be included, a revision to the project costings will also be required.
- 20 Where Tranen provides a proposal for work spanning more than 12 months, unless otherwise stated lump sum prices and unit rates are firm for the first 12 months, but subject to adjustment for price escalation thereafter, particularly, but not limited to, for fuel, herbicide and plant costs.
- 21 Where Tranen provides a price, not based on a detailed tender specification, for a typical revegetation plan or similar document for submission to an authority for approval, unless otherwise stated the price allows a draft plus two revisions. Tranen may bill time taken to prepare any subsequent revisions required at its prevailing hourly rates.
- 22 Tranen may provide general details of work carried out under the brief to others for publicity purposes without prior reference to the client, but will not disclose information which it considers confidential without prior client approval.
- 23 Matters not covered by the above will be treated in accordance with Australian Standard 4122-2000 *General conditions of contract for engagement of consultants*.