

Standard Terms and Conditions

1. Definitions and Interpretations

“**Client**” means a person or entity requesting the Services including where the context requires the employees, agents and subcontractors of the Client.

“**Client’s Information**” means the information referred to further in clause 14 of the Terms and Conditions.

“**Epic Poolz and Landscaping**” means Epic Poolz (ABN 50 206 328 331) including where the context requires its employees, agents and sub-contractors.

“**Quote**” means a written quote prepared by Epic Poolz and Landscaping, at a Client’s request.

“**Reimbursable Expenses**” means costs, charges and expenses incurred by Epic Poolz and Landscaping in order to provide the Services (exclusive of the fee charged by Epic Poolz and Landscaping for the Services).

“**Services**” means the services referred to further in clause 2 of the Terms and Conditions.

“**Terms and Conditions**” means these terms and conditions.

The singular shall where the context requires mean the plural and vice versa.

2. Services

2.1 Epic Poolz and Landscaping agrees to provide the Services to the Client as described in the Quote or as otherwise agreed from time to time in writing only between Epic Poolz and Landscaping and the Client.

2.2 The Terms and Conditions will apply to all the Services that Epic Poolz and Landscaping provides or will provide to the Client unless otherwise agreed in writing.

2.3 Epic Poolz and Landscaping reserves the right to cease and withhold the provision of the Services should the Client not pay an invoice or account in accordance with the Terms and Conditions.

3. Price

3.1 All prices and rates contained in a Quote are fixed and not subject to escalation unless stated otherwise in writing between Epic Poolz and Landscaping and the Client, refer to clause 10 of these Terms and Conditions.

3.2 Unless stated in writing between Epic Poolz and Landscaping and the Client, all prices and rates stated in a response to a Quote shall be in Australian Dollars (AUD\$).

3.3 The Client must agree in writing to the rates and fees stated in response to a Quote prior to the commencement of provision of the Services by Epic Poolz and Landscaping.

4. Invoicing and Accounts

4.1 Subject to clauses 4.2 and 4.3, Epic Poolz and Landscaping will invoice the Client for the Services at the agreed rate and fee and Reimbursable Expenses, as set out in the response to a Quote, at the completion of the Services.

4.2 Epic Poolz and Landscaping may request payment from the Client of its fee and Reimbursable Expenses in advance at Epic Poolz and Landscaping’s discretion.

4.3 Epic Poolz and Landscaping may request progress payments from the Client, at its discretion.

4.4 Should the progress of work comprising the Services be delayed for longer than one month for reasons beyond Epic Poolz and Landscaping’s control, an invoice for the Services completed to date may be issued to the Client for payment.

4.5 The Client shall inform Epic Poolz and Landscaping if any of the Client details change subsequent to the Client agreeing to the Terms and Conditions.

5. Payment

- 5.1 The Client as specified and detailed in the Quote shall be legally responsible for the payment of all invoices and accounts in respect to the Services.
- 5.2 A deposit payable by the Client to Epic Poolz and Landscaping shall be paid prior to the start of any works or services.
- 5.3 The terms of payment are strictly fourteen (14) days (or such other period as nominated in writing by Epic Poolz and Landscaping herein)
- 5.4 Should the Client fail to make payment of any invoice rendered by Epic Poolz and Landscaping on the due date, then Epic Poolz and Landscaping will be entitled to charge the Client an administration fee of:
- 5.4.1 5 percent of the amount of the invoice payable: and
- 5.4.2 a further 1.25 percent per month (15 percent per annum) payable per year, or part thereof, until payment made by the Client.
- 5.5 All costs and expenses incurred by Epic Poolz and Landscaping in recovering monies due to it inclusive of solicitor's charges, debt collector's fees and disbursements, any costs or charges in relation to security documents and any fee on dishonour shall be a debt due and owing by the Client to Epic Poolz and Landscaping.

6. Retention of Title

- 6.1 Title in the goods installed does not pass to the Client until the Client has made payment in full for the goods and, further, until the Client has made payment in full of all the money owing by the Client to Epic Poolz and Landscaping (whether in respect of money payable under a specific contract or on any other account whatsoever).
- 6.2 Whilst the Client has not paid for the goods and services supplied in full at any time, the Client agrees that property and title in the goods will not pass to the Client and Epic Poolz and Landscaping retains the legal and equitable title in those goods supplied.

7. Taxes

- 7.1 All prices and rates shown on the Quote for the Services are exclusive of any Goods and Services Tax ('GST') payable.
- 7.2 GST will be charged on all the Services to which it is applicable, as required by Federal Law, at the appropriate rate and will be shown separately on the tax invoice that Epic Poolz and Landscaping will supply to the Client.

8. Communication

- 8.1 Epic Poolz and Landscaping will communicate with the Client by email unless the Client requests communication to be in writing.
- 8.2 Epic Poolz and Landscaping does not warrant to the Client that email communications will be secure or free from viruses and Epic Poolz and Landscaping will not be liable for any loss or damage arising from emailed communications.

9 Information

- 9.1 The Client must provide all information and documents sought by Epic Poolz and Landscaping in order to enable Epic Poolz and Landscaping to provide the Services as well as all relevant

information and documents which may become available and which are relevant to the Services.

- 9.2 The Client warrants to Epic Poolz and Landscaping that all information and documents provided to Epic Poolz and Landscaping in order to provide the Services will be complete and accurate.
- 9.3 Where the Client elects not to proceed with some or all of the works comprised in the Services, Epic Poolz and Landscaping shall be entitled to a fee to reasonably compensate Epic Poolz and Landscaping for the Services provided in respect of such work undertaken or still to be undertaken in relation to the Services up to the date of receipt of written notification by the Client of its election not to proceed with some or all of the works comprised by the Services. Such fees shall be based on the value of the work as part of the Services still to be performed as determined by Epic Poolz and Landscaping.

10 Variations

- 10.1 A quotation is subject to change if any variation from the plan of schedule works or specifications occurs, referred to further in clauses 10.2, 10.3 and 10.4
- 10.2 All variation requests in respect to the Services must be made by the Client to Epic Pool and Landscaping, in writing.
- 10.3 Any excavation involves risk of damage to existing underground infrastructure in addition to the possibility of encountering unexpected subsoil conditions including, but not limited to, rock, clay, and existing or abandoned construction elements. Reasonable effort will be made by Epic Poolz and Landscaping to locate or predict said risk but no warranty is expressed or implied as to what will be discovered or encountered during construction. Any such adverse conditions which arise during construction will require additional work, by accepting these Terms and Conditions the Client agrees to these potential additional fees which may include work by other external contractors when necessary in the opinion of Epic Poolz and Landscaping.
- 10.4 Material costs may be subject to change, pricing at the time of quotation may differ from actual pricing upon order placement.
- 10.5 All additional costs incurred by Epic Poolz and Landscaping to accelerate the completion of work comprising the Services including variations to the works comprising the Services at the request of the Client shall be borne by the Client.
- 10.6 Variations to the Services shall be calculated at the rates stated in the response to the Quote, or at Epic Poolz and Landscaping's then prevailing rates for labour and materials at the time of variation.

11 Subcontracting & Consultants

- 11.1 The Client may not assign, transfer or subcontract any of its rights or obligations under the Terms and Conditions or the benefit of the Services without the written consent of Epic Poolz and Landscaping.
- 11.2 Unless agreed in writing to the contrary between Epic Poolz and Landscaping and the Client, no assignment, transfer or subcontracting shall release the Client from any obligation under the Terms and Conditions.
- 11.3 If Epic Poolz and Landscaping considers it appropriate, Epic Poolz and Landscaping may engage consultant(s) to assist Epic Poolz and Landscaping in specialist areas with regard to provision of the works comprising the Services, without the need by Epic Poolz and Landscaping to obtain the Client's consent or approval to such engagement.

11.4 The Client agrees to meet the reasonable cost of any consultant(s) engaged by Epic Poolz and Landscaping to assist in the provision of the works comprising the Services plus 10% of the charge or fee rendered to Epic Poolz and Landscaping by such consultant.

12 Site Safety

12.1 Prior to Epic Poolz and Landscaping accessing or entering the site(s) where the Services are to be provided the Client must provide Epic Poolz and Landscaping with the Client's occupational, health and safety policy and requirements for the site(s) in writing.

12.2 The Client must inform Epic Poolz and Landscaping of all known risks, dangers and hazards on the site(s) where the Services are provided or to be provided.

12.3 Epic Poolz and Landscaping shall not be liable to the Client or any third party in regard to occupational, health and safety on the site(s) in respect to the provision of the Services to the Client.

12.4 The Client indemnifies and keeps Epic Poolz and Landscaping indemnified against all loss, damages, injury or death that may be suffered or sustained by reason of the provision of the Services at the site(s).

12.5 Epic Poolz and Landscaping may at its discretion refuse to enter any site or sites pursuant to the provision of the Services in the event that Epic Poolz and Landscaping in its absolute discretion considers entry to a site or sites pursuant to the provision of the Services to be dangerous, unsafe or hazardous without Epic Poolz and Landscaping being liable to the Client in breach of provision of the Services.

12.6 The Client must arrange access for Epic Poolz and Landscaping to the site(s) where the Services are provided or to be provided.

12.7 Epic Poolz and Landscaping shall be entitled to charge the client its usual fees for travelling and attending the site(s) and shall be entitled to recover from the Client all costs, charges and expenses incurred by reason of any delay caused to Epic Poolz and Landscaping in entering on to the site(s) which were not created or caused by Epic Poolz and Landscaping.

13 Termination

13.1 Either party may terminate the Services at any time by giving written notice to the other party subject to the further provisions of these Terms and Conditions.

13.2 Upon termination of this agreement made by these Terms and Conditions, Epic Poolz and Landscaping shall be entitled to recover from the Client all its loss and damages in the event that the Client terminates the agreement made by these Terms and Conditions prior to Epic Poolz and Landscaping providing or allowed to provide all the Services.

14 Confidentiality

14.1 Any engineering data, drawings, specifications, information and documents provided to Epic Poolz and Landscaping by the Client shall be kept confidential and shall not be disclosed by Epic Poolz and Landscaping to any third person without prior written consent of the Client, except as necessary to provide the Services or as required by Law (the Client's Information).

14.2 The Client's Information shall be and remain the property of the Client and shall be used by Epic Poolz and Landscaping only in performance of the Services, and shall be returned to the Client on completion of the Services.

14.3 All documents, design concepts, drawings, information, specifications tables, calculations, bill(s) of quantity and any other document(s) produced or provided by Epic Poolz and Landscaping in relation to the Services are confidential to the Client and any Epic Poolz and

Landscaping information can only be used by the Client in relation to the Services only and must not be used for any other purpose or provided to third parties by the Client without prior written consent of Epic Poolz and Landscaping. If any information provided by Epic Poolz and Landscaping to the Client is used, accessed or utilised by a third party then the Client indemnifies and keeps Epic Poolz and Landscaping indemnified against all claims demands judgments orders loss injury or damage suffered by Epic Poolz and Landscaping resulting from such use or access by the Client of Epic Poolz and Landscaping information.

15 Copyright & Licence

- 15.1 All intellectual property including but not limited to copyright in designs and information remains vested in Epic Poolz and Landscaping only. The Client may use Epic Poolz and Landscaping designs and information which they are supplied in relation to the provision of Services only.
- 15.2 The Client expressly agrees that it will not utilise any Epic Poolz and Landscaping designs and information provided to it in the course of Epic Poolz and Landscaping providing its Services for any purpose and at any other location or site other than as stated in the Quote or as otherwise agreed in writing only between Epic Poolz and Landscaping and the Client.
- 15.3 The Client shall not use, or make copies of any of Epic Poolz and Landscaping without the written consent of Epic Poolz and Landscaping and shall not utilise any of Epic Poolz and Landscaping designs and information other than in respect to the Services only.

16 Conflict of Interest

- 16.1 Epic Poolz and Landscaping will immediately notify the Client of any matter which gives rise, or may give rise, to a conflict of interest.
- 16.2 If Epic Poolz and Landscaping discovers a conflict of interest between the Client and another client, Epic Poolz and Landscaping may cease to provide the Services on behalf of the Client without any legal liability owing to the Client. Subject to such a conflict of interest, Epic Poolz and Landscaping may act for any other party.

17 Warranties

- 17.1 Epic Poolz and Landscaping warrants that:
 - 17.1.1 It shall exercise the degree of skill, care and diligence normally exercised in similar circumstances.
 - 17.1.2 It will use reasonable care and skill in providing the Services.
 - 17.1.3 Unless specifically requested otherwise, all advice given will be based on Australian Standards and government regulations as in force at the time when the advice is provided. The advice provided will not take into account past or future proposed changes to the codes.
- 17.2 Epic Poolz and Landscaping does not warrant against any concrete cracks, that are naturally likely to occur due to expansion and contraction of concrete.

18 Liability

- 18.1 The Client must advise Epic Poolz and Landscaping of any known gas, electrical or water supply and services that are located at the site(s) (Utilities) where the Services are provided or to be provided. Epic Poolz and Landscaping shall not be liable for any loss or damage caused to Utilities by the provision of incorrect information or the failure to provide information by the Client to Epic Poolz and Landscaping or by the provision of the Services.

19 Precedent of Documents

19.1 In the event of any conflict and inconsistency between the Terms and Conditions and any purchase order or similar document provided by the Client to Epic Poolz and Landscaping in relation to the Services then the provisions contained in the Terms and Conditions shall take preference and apply to the extent of such inconsistency.

19.2 Where the terms of the Quote conflict with the Terms and Conditions, then the said Terms and Conditions shall take precedence over the terms of the Quote to the extent of such inconsistency.

20 Dispute Resolution

20.1 Negotiation

20.1.1 Any dispute which arises between Epic Poolz and Landscaping and the Client arising out of or in connection with the Services must be dealt with in accordance with this clause 20.

20.1.2 A party may by serving notice in writing upon the other party, refer a dispute to each other for resolution. The notice must specify:

- (i) the dispute;
- (ii) particulars of the party's reasons for being dissatisfied; and
- (iii) the position which the party believes is correct including the facts supporting its position.

20.1.3 If the parties are unable to resolve the dispute referred to in clause 20.1.2 within ten (10) business days of its referral to them, either party may commence litigation in respect of that dissolution.

20.1.4 Compliance with the requirement of this clause 20.1 in respect of a dispute is a condition precedent to commencement of litigation in respect of that dispute.

20.2 Dispute resolution may delay performance, Epic Poolz and Landscaping may in its discretion withhold and stop providing the Services until the dispute is resolved.

21 Authority

21.1 If Epic Poolz and Landscaping accepts instructions from the Client in relation to the Services to be undertaken on behalf of a third party, and invoices are rendered in respect to the Services, it will not be a defence open to the Client in endeavouring to avoid liability for payment to state that it was acting as agent for a third party in requesting the Services and the Client will be jointly and severally liable with the third party for the payment to Epic Poolz and Landscaping of all monies owing to Epic Poolz and Landscaping by reason of the acceptance and signing of these Terms and Conditions by the Client.

22 Law

22.1 The law of the State of Western Australia shall be the proper law of and govern this Agreement. Epic Poolz and Landscaping and the Client accept and submit to the exclusive jurisdiction of the courts of Western Australia.