

1) DEFINITIONS

In these terms and conditions:

"Additional Charges" means the charges set out in clause 12;

"Business Day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in Victoria;

"Consequential Loss" means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

"Customer" means any person offering to contract with Tree Logic on these terms and conditions including that person's agents, servants and employees and any related bodies corporate as defined in the *Corporations Act 2001 (Cth)*;

"Fee Proposal" means the proposal provided by Tree Logic to the Customer as to the fees for Services;

"Invoice" means the invoice issued by Tree Logic to the Customer setting out the amount to be paid by the Customer;

"Loss" means any loss or damage whatsoever and howsoever caused and includes, without limitation, injury to or death of any person, damage to any real or personal property (including intellectual property) of any person, loss of income or profits, actual or prospective liability to any third party, any legal costs and any indirect or Consequential Loss or damage;

"Order" means any order for services placed by the Customer with Tree Logic, in a form acceptable to Tree Logic;

"Scheduled Service Time" means the date and time agreed by the Customer and Tree Logic that Tree Logic will provide the Services;

"Services" means the arboriculture services provided by Tree Logic to the Customer as agreed between the Parties pursuant to an Order; and

"Tree Logic" means Tree Logic Pty Ltd (ACN 080 021 610) and its agents, servants and employees and any related bodies corporate as defined in the *Corporations Act 2001 (Cth)*.

"Tree Logic Material" means all information contained or produced in the provision in the Services including but not limited to reports and all and any communications and materials written or produced as part of a tender or strategic documentation and any information contained or produced on this website.

"Third Party Material" means links to, or content from third parties contained in Tree Logic Material or upon Tree Logic's website.

2) GENERAL

a) By engaging Tree Logic to provide the Services, the Customer is deemed to have accepted these terms and conditions.

b) Unless Tree Logic otherwise agrees in writing, these are the only terms and conditions that apply to the provision of Services by Tree Logic and the Customer agrees that these terms and conditions will in all circumstances prevail over any other document, Order or other terms.

c) Subject to clause 2(d) these terms and conditions supersede and exclude all prior and other discussions, dealings, representations (contractual or otherwise) and arrangements relating to the provision of Services including but not limited to those relating to the performance of those Services or the results that ought to be expected from the Services.

d) If there is an inconsistency between any other terms agreed by the Customer and Tree Logic in writing and/or these terms and conditions, the terms agreed by the Customer and Tree Logic in writing will prevail to the extent of any inconsistency.

3) ORDERS

a) All Orders must be placed with Tree Logic.

b) The Customer must provide Tree Logic with all the information and documentation that Tree Logic requires to perform the Services.

c) The Customer is responsible for ensuring that all information and documentation provided to Tree Logic in respect of any Order is accurate and not misleading.

d) Tree Logic has the discretion to accept or reject any Order or any variation or modification of an Order requested by the Customer.

4) FEE PROPOSAL

a) Upon Tree Logic receiving an Order from a Customer, Tree Logic will provide that Customer with a Fee Proposal.

b) A Fee Proposal is valid for a period of 60 days from the date of issue.

d) Acceptance of the Fee Proposal occurs when the Customer provides to Tree Logic confirmation that the Fee Proposal is accepted at which point in time such Fee Proposal becomes binding on the Customer.

5) CANCELLATION

If, after acceptance of Tree Logic's Fee Proposal pursuant to clause (4)(d) above, the Customer cancels an Order, Tree Logic is entitled to invoice the Customer for the following amounts, which the Customer shall be liable to pay:

i) all costs, expenses and disbursements incurred by Tree Logic in relation to providing the Services pursuant to that Order prior to its cancellation; plus

ii) in relation to time expended by Tree Logic providing the Services pursuant to that Order prior to its termination, an amount equal to \$185.00 per hour (ex GST), pro rata for part thereof.

6) WARRANTIES

All warranties and conditions that are capable of exclusion and would, apart from this provision, form part of these terms and conditions, are expressly excluded to the maximum extent permitted by law.

7) LIMITATION OF LIABILITY

a) Except where legislation prevents Tree Logic's liability from being limited, or where a limitation of liability would otherwise render Tree Logic liable to a penalty, Tree Logic's liability in connection with the provision of Services is limited to any one of the following as determined by Tree Logic in its sole discretion:

i) Tree Logic providing the Services again; or

ii) the refund of the fees paid by the Customer to Tree Logic for the Services.

b) To the extent the law permits and notwithstanding any other clause of these terms and conditions, Tree Logic excludes all liability whatsoever to the Customer for any Consequential Loss.

8) INDEMNITY

The Customer must indemnify, and keep indemnified, Tree Logic from and against any Loss or claims, including any third party claims, arising out of a breach of these terms and conditions by the Customer or anyone else authorised to represent the Customer.

9) PROVISION OF SERVICES

a) Tree Logic will endeavour to provide the Services to the Customer as close as possible to the Scheduled Service Time.

b) Time is not of the essence under this clause and Tree Logic shall not be liable for any failure or delay in the provision of Services for any reason whatsoever.

c) Notwithstanding any other clause in these terms and conditions, the Customer acknowledges and agrees that Tree Logic's capacity to provide the Services to the Customer at the Scheduled Service Time is subject to variables including but not limited to:

i) site access;

ii) weather conditions;

iii) compliance with all laws and regulations applicable to Tree Logic's operations and the provision of Services; and

iv) compliance with all applicable Tree Logic policies, systems and guidelines, particularly in regard to safety.

10) REPORTS

a) If the Services include a report, a draft report may be produced within 10 Business Days of the date that the Customer provides Tree Logic access to the site and all other information requested by Tree Logic.

b) Tree Logic will produce and issue to the Customer a final report in electronic format. A single bound hard copy may be requested at no additional charge.

11) PRICE

Subject to clauses 4(b) and 12, and unless otherwise agreed in

- c) Any price indications or price list provided by Tree Logic to the Customer or otherwise made available to the Customer are subject to alteration at any time without notice.

12) ADDITIONAL CHARGES

- a) Any additional services requested by the Customer beyond the scope of the Fee Proposal will be charged at a rate of \$185.00 (ex GST) per hour.
- b) In the event that the Customer fails to provide access to Tree Logic for the provision of Services at the Scheduled Service Time, the Customer will be charged for Tree Logic's travel time at a rate of \$145.00 (ex GST) per hour.
- c) In the event that a Customer requests to amend billing details on an Invoice, Tree Logic will charge an administration fee of \$30.00 (ex GST).
- d) In the event that the Customer requests an additional hard copy of a report, Tree Logic may, in its sole discretion, charge an administration fee as determined by Tree Logic.

13) FORCE MAJEURE

- a) Tree Logic is not liable for any failure to perform any of its obligations under these terms and conditions as a result of any event beyond its reasonable control including, without limitation, where Tree Logic is prevented or hindered from providing the Services as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network or weather conditions of any kind. In such circumstances, Tree Logic may suspend performance of any obligations under these terms and conditions while the event continues. Tree Logic shall not incur any liability to the Customer in respect of such suspension.
- b) If any of the above events occur for more than 10 days, Tree Logic may, without liability, terminate any affected Services and/or these terms and conditions immediately by notice in writing to the Customer.

14) PAYMENT AND DEFAULT

- a) Subject to clauses 14(b) and 14(f), and unless otherwise agreed in writing by Tree Logic (including where otherwise identified on any Invoice issued by Tree Logic), all Invoices and Additional Charges shall be payable by the Customer within 30 days from the date of the Invoice.
- b) In the event that a Customer does not have an ABN or such ABN is not provided to Tree Logic at the time of making an Order, Invoices will be payable upon delivery of Services, unless otherwise agreed in writing by Tree Logic.
- c) Tree Logic may, in its sole discretion, require payment prior to the provision of Services.
- d) Tree Logic reserves the right to charge interest on any overdue amount at a rate of 10% per annum from the due date until payment in full is received by Tree Logic.
- e) The Customer agrees to bear all costs incurred by Tree Logic in collecting any overdue amounts including but not limited to collector agency fees, legal fees and court costs, on a full indemnity basis.
- f) If;
 - i) the Customer defaults on any payments or is unable or states that it is unable to pay its debts as and when they fall due;
 - ii) the Customer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Customer's estate or any part of the Customer's property or assets;
 - iii) the Customer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
 - iv) a receiver, recover and manager, controller or voluntary administrators is appointed over any part of the property or assets of the Customer; or
 - v) the Customer experiences any analogous event having substantially similar effect to any of the events specified above,

then Tree Logic may, at its option, cancel any Order and/or cease to provide Services without notice to the Customer and without prejudice to any other action or remedy which Tree Logic has or

writing, the price for the Services shall be the price stipulated in the Fee Proposal.

might otherwise have under these terms and conditions. In such circumstances, all monies owing and outstanding to Tree Logic on any Invoice and irrespective of whether the due date on any Invoice has occurred or passed shall become immediately due and payable.

15) COPYRIGHT

The subject matter on and accessible from Tree Logic's website and publications is copyright protected. Apart from fair dealing permitted by the Copyright Act 1968, Tree Logic grants visitors to this website permission to download copyright material only for private and non-commercial purposes and specifically excludes any right to edit or modify Tree Logic's Material or Third Party Material. For reproduction or use of Tree Logic Material or Third Party Material beyond such use, written permission must be obtained directly from Tree Logic or the relevant third party copyright owner. If given, permission will be subject to the requirement that the copyright owner's name and interest in the material be acknowledged when the material is reproduced or quoted, in whole or in part.

16) RELEASE

Except where legislation cannot be excluded or would make this clause illegal, or where the inclusion of this clause would otherwise make Tree Logic liable to a penalty, the Customer releases Tree Logic from any claim that is made against Tree Logic for damages or otherwise in respect of any Loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising from the provision of Services except to the extent that such Loss, damage, death or injury has been caused by Tree Logic.

17) INDEMNITY

The material contained on this website is provided for the interest and convenience of Tree Logic's Customers only. The Customer indemnifies and keeps indemnified, Tree Logic from and against all actions, claims, suits, demands, damages, liabilities, costs or expenses arising out of or in any way connected with the use by the Customer of Tree Logic's Material or Third Party Material contained on this website. Tree Logic makes no representation regarding the use or result of the use of any information provided on this website including any document, service, link, product or information produced or published in connection with the Services as to their correctness, suitability, accuracy, reliability or otherwise. Tree Logic is not providing advice nor accepting responsibility for any information contained on this website.

18) SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

19) VARIATION AND ASSIGNMENT

These terms and conditions may be varied by agreement between the parties in writing only. The Customer may not assign its rights under these terms and conditions without Tree Logic's prior written consent.

20) GOVERNING LAW

These terms and conditions are governed by the law of the State of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in Victoria and waives any right to claim that those Courts are an inconvenient forum.

21) GST AND OTHER TAXES AND DUTIES

Notwithstanding any other clause in these terms and conditions, to the extent that any supply made under or in connection with these terms and conditions is a taxable supply (as defined by GST Law), the Customer must pay to Tree Logic, in addition to the consideration provided for under these terms and conditions for that supply an amount (additional amount) equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply. The Customer must pay to Tree Logic the additional amount at the same time as the consideration to which it is referable. The Customer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the provision of Services.

22) WAIVER

Waiver by Tree Logic of a breach of these terms and conditions or of any right or power arising on a breach of these terms and conditions must be in writing and signed by Tree Logic. A right or power created or arising on a breach of these terms and conditions

is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

23)

NO RIGHT TO OFFSET

No amount owing whether present or future, actual, contingent or prospective and on any account whatsoever by the Customer to Tree Logic may be offset against any amount owing whether present, future, actual, contingent or prospective of the Customer to Tree Logic hereunder on any other account whatsoever.