

Terms and Conditions

- A. The Client requires the Services and Stormwater Sydney has agreed to provide the Services.
- B. Stormwater Sydney and the Client have agreed to be bound by the terms of this Agreement as set out below.

1. Interpretation and definitions

- 1.1. Headings are used for convenience only and do not affect the interpretation unless the context indicates a contrary intention. The following rules apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 1.2. A singular word includes the plural, and vice versa.
- 1.3. If a word is defined, another part of speech or derivative of that word has a corresponding meaning. Other grammatical forms of defined words or expressions have corresponding meanings.
- 1.4. No rule of construction applies to the disadvantage of a party on the basis that the party has prepared or put forward the Agreement or any part of the Agreement.
- 1.5. In this Agreement, the following terms mean:
 - Agreement** means these terms and conditions.
 - Business Day** means any day excluding Saturdays, Sundays, national or state public holidays or 27, 28, 29, 30 or 31 December in any year.
 - Client** means the person or entity identified on page 8 of this Agreement.
 - Contract** means a contract which is formed in accordance with clause 2.
 - Fee** means the fees set out in in the Quotation.
 - Premises** means the premises set out in the Quotation.
 - Program** means the program set out in the relevant Quotation.
 - Quotation** means any document, including in the form of Schedule 1, issued by Stormwater Sydney to the Client which details the proposed Services.
 - Services** means the work, services and materials set out in the Quotation.
 - Stormwater Sydney** means OSDAustralia Pty Ltd ACN 617 625 519 trading as Stormwater Sydney and any of its related bodies, successors or assigns.

2. Agreement and formation of Contract

- 2.1. A Contract is formed on the earlier of:
 - 2.1.1. when a Quotation is executed by the Client;
 - 2.1.2. where the Client confirms orally or in writing that a Quotation is accepted;
 - 2.1.3. when the Client pays any deposit payable in relation to a Quotation;
 - 2.1.4. when the Client issues a purchase order or similar document confirming that the Services and terms of the Quotation are acceptable;
 - 2.1.5. when the Client accepts the Agreement and any relevant Quotation through any software or other electronic means of communication; and
 - 2.1.6. Stormwater Sydney commences the Services at the direction of the Client.
- 2.2. Each Contract will comprise the relevant Quotation and the terms and conditions in this Agreement. The Agreement and Quotation form the entire Contract between Stormwater Sydney and the Client.
- 2.3. To the extent there is an inconsistency between the Agreement and a Quotation, the Quotation prevails to the extent of that inconsistency.

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- 2.4. The Agreement applies to all Quotations and Services provided by Stormwater Sydney whether for ongoing or one-off Services and/or contained in a single or multiple Quotations.
- 2.5. Where there are multiple Quotations, each Quotation and the Agreement form a Contract.
- 2.6. Any Quotation or fee estimate provided by Stormwater Sydney is indicative only and subject to any assumptions outlined in the Quotation. Any Quotation or fee estimate does not create any binding agreement as to the total cost of the Services.
- 2.7. The Client acknowledges that at the time of executing a Quotation it has been provided with, read and understood the Agreement and agree to be bound by its provisions.
- 2.8. Any purchase order, confirmation, terms and conditions or other document issued or provided by the Client will not form part of a Contract unless explicitly stated in the Quotation.

3. Services

- 3.1. Stormwater Sydney agrees to provide the Services to the Client in accordance with the Agreement and Quotation in exchange for the Fee.
- 3.2. Unless otherwise agreed and evidenced in any Quotation, other written agreement or notice, the Services will be provided on Business Days, starting no earlier than 7:00 am and finishing no later than 3:30 pm. Any Services provided on Saturday or Sunday will be at Stormwater Sydney's discretion and direction.
- 3.3. The Client acknowledges that performance of some of the Services may take place away from the Premises.
- 3.4. Where the amount of work is greater than that stated in the Quotation:
 - 3.4.1. if Stormwater Sydney reasonably believes that the extra work will not exceed 10% of the quotation sum, Stormwater Sydney will carry on providing the Services without contacting the Client and the Client will be liable for any extra work performed as a result;
 - 3.4.2. if Stormwater Sydney reasonably believes that the extra work will exceed 10% of the quotation sum, Stormwater Sydney will seek the Client's approval before carrying on providing the extra services.

4. Terms

- 4.1. The Agreement is in effect until it is terminated in accordance with clause 10.
- 4.2. Unless terminated in accordance with clause 10, each Contract is in effect from when it is formed in accordance with clause 2 until the Services set out in the relevant Quotation are completed.
- 4.3. The dates set out in the Program may be extended by Stormwater Sydney where there are situations or events that occur which are outside the reasonable control of Stormwater Sydney which impede or cause delay to the provision of Services. Such situations or events may include, but are not limited to:
 - 4.3.1. where materials required for the provision of the Services have not been delivered on or before the required date or time;
 - 4.3.2. wet or inclement weather;
 - 4.3.3. where the Client requests a change to the Services which is agreed to by Stormwater Sydney;
 - 4.3.4. where the Services have been suspended in accordance with clause 5.4.2.

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- 4.4. Six months from the date of Stormwater Sydney's final invoice issued under the Agreement or a Contract, each party releases the other from all current and future liability under the relevant Contract, save for the Client's obligation to pay the Fee and any claim or dispute that has been notified in writing before that date.

5. Payment

- 5.1. The Client agrees to pay Stormwater Sydney the Fee as invoiced by Stormwater Sydney in exchange for the provision of the Services.
- 5.2. The Client is to pay the Fee as invoiced by Stormwater Sydney into the bank account nominated by Stormwater Sydney from time to time or as otherwise directed by Stormwater Sydney in writing.
- 5.3. The Client shall pay any tax invoice issued by Stormwater Sydney as determined by the Quotation.
- 5.4. If the Client fails to pay any tax invoice issued by Stormwater Sydney under any Contract within 15 Business Days of receiving that invoice:
- 5.4.1. interest will accrue daily on any outstanding amounts payable at the rate of 10% per annum; and
 - 5.4.2. Stormwater Sydney may immediately suspend the performance of any Services under any Contract without giving any notice to the Client.
- 5.5. All amounts stated whether orally or in writing, are exclusive of GST unless otherwise stated.

6. Variation to Services

- 6.1. If the Client directs Stormwater Sydney, either orally or in writing, to increase or otherwise change the scope of Services under any Quotation, Stormwater Sydney may vary the Services and Fee payable pursuant to the Quotation accordingly.
- 6.2. If Stormwater Sydney advises the client, either orally or in writing, that the conditions found on the Premises during the provision of the services, differ from what was reasonably expected and provided for in the quotation, Stormwater Sydney may offer an alternative solution to achieve a similar outcome. Where an alternative solution is not viable that portion of the Services may be removed from the Contract.

7. Limit on Liability

- 7.1. Stormwater Sydney's total liability arising out of or in connection with the Agreement, Quotation or any Contract, at law, in equity, under statute or otherwise shall not exceed an amount equal to the Fee payable in respect of the relevant Agreement, Quotation or Contract. This limitation does not apply to liability referred to in clause 7.2.
- 7.2. Clause 7.1 does not limit Stormwater Sydney's liability:
- 7.2.1. to the extent that it:
 - 7.2.1.1. cannot be limited at law;
 - 7.2.1.2. arises out of Stormwater Sydney's fraud or criminal conduct; or
 - 7.2.1.3. arises out of Stormwater Sydney's abandonment of its obligations under the Agreement, Quotation or any Contract;
 - 7.2.2. to the extent that Stormwater Sydney is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for any act or omission of Stormwater Sydney which results in a reduction in the amount

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payable under a relevant policy of insurance because the insurer denies liability or reduces its liability;

7.2.3. for personal injury (including death) or illness of any person; or

7.2.4. for infringement by Stormwater Sydney or its subcontractor subcontractors of any intellectual property right or moral right.

7.3. Notwithstanding any other provision of the Agreement or Quotation, neither party shall be liable to the other under the Agreement, Quotation or any Contract, at law, in equity, under statute or otherwise for:

7.3.1. loss of business opportunity;

7.3.2. loss of profit;

7.3.3. loss of goodwill;

7.3.4. loss of contracts;

7.3.5. loss of or corruption of data; or

7.3.6. loss of anticipated savings.

8. Warranties

8.1. Stormwater Sydney warrants to the Client that:

(Insurance) it has obtained all necessary insurances and Work Health & Safety documentation to conduct the Services as set out in the Agreement.

(Approvals) all relevant approvals, permits or other authorisations required to provide the Services under this agreement have been received by Stormwater Sydney.

(Skill, care and diligence) Stormwater Sydney will perform the Services to the standard of skill, care and diligence as is reasonably expected of a contractor performing the same or similar services.

8.2. The Client warrants to Stormwater Sydney that:

(Information) it has provided Stormwater Sydney with all relevant, up-to-date and accurate information and documents relevant to the Services at the commencement, and during the term of, this agreement and that Stormwater Sydney may rely on the information and documents provided by the Client.

(Resources to pay) it has a reasonable belief that it will have sufficient financial resources to pay for the Services in accordance with this Agreement. The Client further warrants and undertakes that if its financial position changes such that the Client is unlikely to pay for the Services, it will notify Stormwater Sydney as soon as practicably possible and in any event within 5 Business Days.

(Authority) it has the required authority or consent to permit and order Stormwater Sydney to undertake the Services and shall provide evidence of such authority or consent to Stormwater Sydney before commencement of the Services.

(Reliance) Stormwater Sydney may rely on any warranties provided by the Client.

9. Dispute

Any dispute between the Client and Stormwater Sydney will be notified in writing by a party to the other, and must be delivered by hand or email, and adequately detail the dispute. Within seven days of service of a notice, representatives from each party with authority to settle the dispute must meet and use best endeavours to resolve the dispute. If the dispute is not resolved within seven days of such a meeting taking place (or other period as agreed between the

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parties), either party may commence legal proceedings. This clause does not prevent a party from instituting proceedings in a competent court of law to seek injunctive or urgent declaratory relief.

10. Termination

- 10.1. Stormwater Sydney may terminate the Agreement or any Contract (at its sole election and absolute discretion) if the Client:
- 10.1.1. becomes insolvent, is entered into voluntary administration or becomes bankrupt; or
 - 10.1.2. breaches a material term of this Agreement which is not rectified within 5 Business Days of Stormwater Sydney notifying the Client of the breach in writing;
 - or
 - 10.1.3. fails to agree with a solution proposed under clause 6.2 by Stormwater Sydney after a period of 3 Business Days.
- 10.2. For the purposes of clause 10.1, a material term includes, but is not limited to, the following terms:
- 10.2.1. Clause 5 (Payment); and
 - 10.2.2. Clause 8 (Warranties).

If Stormwater Sydney has a reasonable belief that or becomes aware of a breach of any of these material terms, Stormwater Sydney may terminate the Agreement or any Contract by giving 3 Business Days' notice to the Client.

- 10.3. The Client may terminate the Agreement or the relevant Contract if, and only if:
- 10.3.1. Stormwater Sydney has not started or completed the Services within a reasonable period of time from the date agreed under this Agreement or the relevant Contract, the Client has served a notice on Stormwater Sydney requesting that Stormwater Sydney commence the Services or provide appropriate reasons as to why the Services cannot be commenced, and Stormwater Sydney does not commence works or does not respond to the notice within 10 Business Days' of receiving the notice;
 - 10.3.2. Stormwater Sydney has served a notice on the Client informing the Client that Stormwater Sydney is unable to perform the services within a reasonable time of the Agreement or relevant Contract being executed by the parties;
 - 10.3.3. Stormwater Sydney becomes insolvent or is entered into voluntary administration;
- 10.4. If Stormwater Sydney:
- 10.4.1. purports to terminate the Agreement or any Contract in accordance with clause 10.1; or
 - 10.4.2. gives notice purporting to terminate the Agreement or any Contract in accordance with clause 10.1; or
 - 10.4.3. the Client otherwise does not fulfil their obligations under this Agreement or any Contract;

the Client will be liable to Stormwater Sydney for any and all losses and costs, including loss of profit, suffered by Stormwater Sydney.

- 10.5. Without limited clause 10.4, if the Agreement or a Contract is terminated by either Stormwater Sydney or the Client, the Client will be liable to Stormwater Sydney for the cost of:

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- 10.5.1. any of Stormwater Sydney's time in performing the Services up to the date that Stormwater Sydney stops providing the Services;
 - 10.5.2. any materials that Stormwater Sydney is contractually liable to pay for that have been incurred up to, and including, the date of termination of the Agreement or the relevant Contract;
 - 10.5.3. any costs reasonably incurred by Stormwater Sydney associated with demobilising any staff or removing materials from the Premises; and
 - 10.5.4. any other costs reasonably incurred by Stormwater Sydney up to, and including, the date of termination of the Agreement or the relevant Contract.
- 10.6. Termination of this Agreement or any Contract will be without prejudice to any claim that either party may have against the other in respect of any breach of the terms of the Agreement that occurred prior to the date of the termination of the Agreement or the relevant Contract.
- 10.7. Notwithstanding any other provision, Stormwater Sydney may terminate the Agreement or any Contract (at its sole election and absolute discretion) if Stormwater Sydney reasonably believes that an assumption contained in a Quotation is inaccurate.

11. Assignment

- 11.1. A party may only assign, novate or otherwise transfer its rights or obligations under this Agreement with the prior written consent of the other party, which must not be unreasonably withheld.
- 11.2. Without limiting clause 11.1, Stormwater Sydney may subcontract any parts of the Services without the Client's consent.

12. Notices

- 12.1. Any notice or other communication to or by a party to the Agreement:
 - 12.1.1. must be delivered to the electronic and/or physical address last provided to the other party;
 - 12.1.2. must be in writing, legible and in English;

13. PPSA

- 13.1. The Client agrees that:
 - 13.1.1. it will assist Stormwater Sydney to enable it to exercise any right in connection with the *Personal Properties Securities Act 2009* (Cth) ('PPSA'), and agrees that Stormwater Sydney need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA in enforcing its Security Interest (as that term is used in the PPSA) under Chapter 4 of the PPSA;
 - 13.1.2. it will not exercise its rights under section 142 and 143 of the PPSA if Stormwater Sydney enforces its Security Interest under Chapter 4 of the PPSA;
 - 13.1.3. it waives its right to receive Notice of Verification Statements (as that term is used in the PPSA) from Stormwater Sydney;
 - 13.1.4. it agrees to do, at its own expense, all things that Stormwater Sydney asks to ensure that Stormwater Sydney's Security Interest is enforceable, perfected and otherwise effective and has the property Stormwater Sydney requires; and
 - 13.1.5. if and to the extent that arrangements contemplated by this Agreement give rise to a Security Interest that has or will be granted by Stormwater Sydney in favour of the Client, the Client irrevocably and unconditionally agrees that it will not itself, or allow

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another person to, perfect or take any steps to perfect that Security Interest in any manner whatsoever.

14. Consumer Law and Sale of Goods Act

The parties agree that, to the greatest extent possible, the provisions of the *Australian Consumer Law* and the *Sale of Goods Act 1923* (NSW) are excluded and do not apply in relation to this Agreement.

15. Severability

If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision shall be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, as required by this clause, then that provision is severable without affecting the validity and enforceability of the remaining parts of that provision or other provisions in the Agreement.

16. Governing law

This Agreement is governed by the laws of New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales.

17. Counterparts

This Agreement or any Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument irrespective of whether compiled physically or electronically.

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Date:	
Client:	
Initial Quotation	
Client address:	
Client Email:	

Execution

Signed on behalf of **OSDAustralia Pty Ltd**
ACN 617 625 519 trading as Stormwater Sydney
in accordance with section 127 of the
Corporations Act 2001:

Director/Secretary

Director

Print Name

Print Name

[Signed as Company]

Signed on behalf of the **Client** in accordance
with section 127 of the *Corporations Act 2001*:

Director/Secretary

Director

Print Name

Print Name

[Signed as Individual]

Signed on behalf of the **Client**:

Signature

Signature/witness

Print Name

Print Name

Schedule 1 – Form of Quotation

[Stormwater Sydney letterhead]

[Date]

[Client address]

Attention: [Client representative]

RE: QUOTATION – [PROJECT IDENTIFIER/NAME]

Dear [Client representative]

1. Premises

The Premises where the Client requests the Services to be completed at is:

[insert Premises]

2. Background

Stormwater Sydney understands that ...

3. The Scope of Services:

Stormwater Sydney agrees to provide the following Services:

- [insert scope of services, works and materials].

4. Fees:

The following Fees are payable in exchange for the Services:

Service	Fee

The quote for the Fees payable under this Quotation is: \$[insert quote]

5. Program:

The Services will be provided in accordance with the Program below:

Part of Services	Date

6. Assumptions:

In preparing the Quotation, we have made the following assumptions:

- [insert list of assumptions]
- This quote includes for all materials, plant and labour.
- We have allowed 2-3 days to complete the work using 2 men.
- Toilet facilities, water and power must be available.
- Workday is 7am to 3.30pm Monday to Friday. Sat-Sun work at Stormwater Sydney's discretion.
- Any extra works identified and agreed will be charged at \$120 per hour per man.

7. Agreement:

- This document is a Quotation as defined under the Stormwater Sydney terms and conditions, which can be found on its website.
- The scope of Services may be varied by a written or oral direction by the Client to Stormwater Sydney.
- The Client is required to pay 50% of the above quoted fee prior to Stormwater Sydney commencing the Services. An invoice can be provided on request.
- The Client shall pay the outstanding balance of the Fees on the conclusion of services, when the final invoice has been issued by Stormwater Sydney.
- The Client shall pay the Fees incurred and invoiced by Stormwater Sydney by EFT to: BSB: 062-014 Account: 1067 4009
- Stormwater Sydney's insurances and WHS documentation will be provided on request.
- This Quotation incorporates the Stormwater Sydney terms and conditions. Capitalised terms used in this Quotation have the same meaning as capitalised terms in the terms and conditions. If you have any questions about the terms and conditions, please let us know.
- This Quotation is valid for 30 days after it has been issued.

Should you have any questions, we can be contacted by email on sales@stormwatersydney.com 1300 741 003 or directly through Paul on 0413 717 190.

Regard

Paul Milic

Director

P: 1300 741 003

E: sales@stormwatersydney.com

W: www.stormwatersydney.com