



Terms and Conditions

The terms of service upon which Agri-Drainage (Pty) Ltd, Registration Number: 2012/06771/07 (hereinafter referred to as “**AD**”), provides its specialized services to its clients are set out and contained herein below. These terms and conditions are binding upon the parties. Please ensure that you thoroughly peruse and understand the contents of this document prior to accepting the quotation sent to you.

1. **SERVICES AND PROCEDURAL MATTERS:**

1.1. **AD** renders *inter alia* the following services to its clients –

- 1.1.1. consulting;
- 1.1.2. surveying;
- 1.1.3. planning, design and feasibility;
- 1.1.4. agronomy;
- 1.1.5. surface drainage;
- 1.1.6. sub-surface drainage;
- 1.1.7. water table management;
- 1.1.8. earthworks;
- 1.1.9. irrigation;
- 1.1.10. automation; and
- 1.1.11. soil sampling.

(hereinafter collectively referred to as the “**Services**”)

1.2. After the consultation and assessment phase, **AD** will provide a written quotation to the client setting out the **Services** to be rendered and the amount payable therefore.

1.3. Should the client accept the quotation, a signed copy of thereof must be returned to **AD** and the applicable deposit as reflected on the quotation (if any) must be paid before the order will be processed by **AD**.



- 1.4. **AD** reserves the right, within its absolute and sole discretion, to waive any deposit requirement in a particular case.
- 1.5. After receipt of the deposit by **AD** and the amount reflecting as freely transferrable funds in its bank account, **AD** will –
 - 1.5.1. prepare the required drawings / plans for approval by the client; and
 - 1.5.2. when the plans are approved, arrange the material and equipment required to render the **Services**; and
 - 1.5.3. arrange a date and time with the client to commence to render the **Services**.
- 1.6. The client is responsible for payment of all costs for the transport of machinery and / or equipment and / or material to and from the site/s where the **Services** are to be rendered. These costs will be included in the final invoice rendered to the client by **AD**.
- 1.7. Transportation costs are not fixed and may vary from time to time. Determination of the amount payable is within the absolute and sole discretion of **AD**.
- 1.8. The client will remain fully liable for payment of any and all work done, together with costs, should the rendering of the **Services** be cancelled by the client prior to its finalization, irrespective of the reason.
2. **SURVEYING AND EARTHWORK SPECIFIC TERMS AND CONDITIONS:**
 - 2.1. Accurate survey data / results are required for the preparation of accurate and effective earthwork calculations / drainage designs which follow the surveying process.
 - 2.2. Should the client conduct its own survey, **AD** cannot accept responsibility for the accuracy thereof. Under these circumstances **AD** does not guarantee the accuracy of the earthwork calculations / drainage designs which are based on the client's survey data / results.



- 2.3. The client herewith indemnifies and holds **AD** harmless against any loss / consequences resulting from inaccurate survey data supplied to **AD** by the client.
- 2.4. The client must ensure that it uses the same format, equipment, software and procedures as **AD**, to ensure the necessary integration with the equipment / software required to conduct the earthwork calculations, earthworks, drainage plan preparation and installation of drainage systems. **AD** takes no responsibility for any adverse consequences resulting from conversion errors / discrepancies cause by the conversion of survey data from other sources.
- 2.5. **AD** accepts no responsibility for the accuracy / effectiveness of the **Services** rendered / installed on land upon which the client conducted its own earthwork calculations / earthworks.
- 2.6. The 'cut / fill' ratios and compaction factors pertaining to specific soil types during the design processes must be accurate and correctly executed. The client indemnifies **AD** for any loss / consequences arising from the rendering of the **Services** by **AD** on land inaccurately prepared by the client.
3. **DRAINAGE SPECIFIC TERMS AND CONDITIONS:**
 - 3.1. **AD** warrants that the design and installation of sub-surface drainage systems will be according to industry standards.
 - 3.2. **AD** guarantees accurate and design specific installation of its drainage systems (not outcome / performance thereof) for a period of 2 (two) years from the date of completion of the installation.
 - 3.3. The client is responsible to provide **AD** with written information, documentation, maps, diagrams and / or plans indicating the precise location of any and all underground installations / services, cables / wiring, pumps, pipelines, servitudes registered over the client's property, or areas upon which no underground drainage installation may be conducted by law, a court order or any other reason, before the final drainage plans have been prepared / the deposit is paid. The client fully indemnifies **AD** for any damage or loss of whatsoever nature (suffered



by the client or any other third party) where no prior written notice was provided.

- 3.4. On the date of installation arranged with the client, the client must make the following machinery / equipment available to **AD** for immediate use:
 - 3.4.1. a tractor capable of towing the 'pipe-cart' utilized by **AD** in its installation process; and
 - 3.4.2. a TLB and / or excavator (for the excavation of connection-trenches, the preparation of water outlets and / or digging in / loosening rocky areas).
- 3.5. Should an installation be conducted near any indicated underground installations / services, cables / wiring, pumps, pipelines, servitudes or other, it is the duty and responsibility of the client to ensure the presence of a representative of the client to excavate / indicate the precise location / depth thereof to avoid damage.
- 3.6. The client must remove all obstructions of whatever nature, including boundary walls, fences, trees etc. Should the removal of such obstructions be required the client must proceed to do so immediately. **AD** may affect the removal on the client's behalf and invoice the client for all costs occasioned thereby, the client herewith accepts full responsibility for payment thereof and indemnifies **AD** against any damage / loss caused.
- 3.7. The client must, as soon as possible after the finalization of the drainage installation, close the trench left by the drainage plough of **AD** by straddling the trench with a tractor and tine or disc implement to prevent erosion or damage to the installation. It is imperative to straddle the trench, and not drive with tractor wheels (or that of any other heavy machinery / equipment) in the open trench (driving across the trench is acceptable but not down the trench-line).
- 3.8. The quotation do not include fittings required during the installation of the drainage and / or irrigation system. If irrigation is to be installed, **AD** will only be able to invoice the client therefore once the installation have been completed and all costs are known.



- 3.9. Should the final quantity of materials or meters actually installed differ from that set out in the quotation, the client will remain liable for payment of all additional material / meters, costs incurred and / or **Services** rendered by **AD**.
- 3.10. **AD** does not accept any responsibility / liability regarding –
- 3.10.1. variable, external and / or unforeseen factors that cannot be controlled by **AD** which could affect, vary and / or influence the performance, effectiveness and / or expected outcome of the sub-surface drainage installations on saline soils (hereinafter the “**Variable Factors**”);
- 3.10.2. the exclusion of liability contained in this clause 3.10 includes **Variable Factors** such as soil composition / conditions, method of irrigation, water quality, rainfall, farming practices, method of fertilizing, liming practices, other soil chemical properties etc.;
- 3.10.3. **AD** cannot and do not take any responsibility or guarantee the expected outcome / performance of the sub-surface drainage installations affected by the **Variable Factors**.
- 3.11. To discount the risks created by **Variable Factors**, a management plan can be prepared to be followed by the client. The management plan will provide for the initiation of the ‘leaching process’ of salts in the soil. This process can take up to 3 (three) years to deliver the desired / expected outcome / result.
- 3.12. **AD** will always commit (within reasonable limits) to assist the client to resolve any problems which occur with any installation where **Variable Factors** are the cause of any difficulties. Notwithstanding, the risk remains wholly that of the client. Any additional costs / fees of **AD** to remedy or resolve **Variable Factors** must be paid by the client.
- 3.13. The client irrevocably consents and agrees to allow **AD** to conduct any tests or apply any possible solutions in an attempt to resolve any **Variable Factors**.
- 3.14. **AD** provides the recommended design and installation specifications / parameters for sub-surface drainage to the client on each quotation and



its website. **AD** provides no warranty and accepts no liability of any nature concerning any design / installation should the client's instructions deviate in any manner from such recommended specifications / parameters.

- 3.15. **AD** reserves the right within its sole and absolute discretion, to amend, vary and / or change any quotation details in the final invoice. Any amendment of the quotation as contemplated herein will apply to circumstances where **AD** becomes aware of any **Variable Factors** which may adversely affect the installation process or performance of the sub-surface drainage or irrigation system. **AD** undertakes to only do so after prior consultation with the client.
- 3.16. Any delay caused by the client (or any of its employees / representatives) during the installation of a drainage system, will bear a punitive cost at a rate of USD 110.00 (One Hundred and Ten Dollars) per hour, limited to USD 900.00 (Nine Hundred Dollars) per day. This includes without limitation improper site preparation, failure to remove obstacles, non-payment by client, non-availability of the required equipment (tractor, excavator and / or TLB), damage to / unearthing of underground installations, pipes / pipelines, pumps, cables / wiring for which no prior written notice was given by the client.

4. **FINANCIAL ARRANGEMENTS:**

- 4.1. All quotations will remain valid for a period of 30 (thirty) days from the date thereof, or until the date a new price list is issued or any cost increases are effected by **AD** (whichever occurs first).
- 4.2. Any and all price increases for which a client has been notified by **AD** at any time, shall be final and binding on the client if no objection has been made thereto within a period of 5 (five) days from notification of the increase.
- 4.3. The final invoice is payable immediately upon presentation thereof to the client.
- 4.4. **AD** reserves the right, within its sole and absolute discretion, to split any deliveries of any goods / materials into such quantities, or to render



performance of any **Services** in the manner and at such intervals as it deems fit. **AD** may render separate invoices for each delivery made / performance rendered.

- 4.5. **AD** reserves the right to charge interest on any arrear amounts, or any part thereof, which remain unpaid after 7 (seven) days from date of invoice.
- 4.6. Interest will be charged at a rate of 17.5% (seventeen point five percent) per annum compounded monthly in advance.
- 4.7. The client shall remain fully liable for any and all fees, costs and / or expenses incurred by **AD** should the client cancel an order at any stage prior to its completion. An invoice submitted to the client by **AD** in accordance with this clause shall serve as sufficient proof of the amount due and payable by the client and **AD** will not be required to substantiate the amounts further in any manner.
- 4.8. Any reduction / discount afforded to a client will be forfeited by such client if any payment is not made promptly on the due date thereof and **AD** will be entitled to claim the full amount from such client.
- 4.9. A certificate of indebtedness / invoice provided under the hand of any director of **AD** will serve as sufficient proof / evidence of the client's indebtedness to **AD** in respect of any matter.
- 4.10. The client agrees to pay all additional / wasted costs resulting from any act or omissions of the client in conflict with these terms and conditions (including suspension of work, modification or change of instructions / scope of work, failure or delay to timeously provide particulars required to enable any work to proceed on schedule).
- 4.11. The client is not entitled to withhold, deduct or set-off any amount from a payment due to **AD** for any reason at any stage. The client must make due and proper payment to **AD** of all invoices without exception.
- 4.12. No relaxation / extension of any payment terms will be enforceable unless **AD** specifically agreed thereto in writing.



4.13. All currencies applied by **AD** will be converted to ZAR (South African Rands) at the applicable exchange rate on the date of invoice to client.

4.14. The risk and duty to make payment to **AD** shall remain that of the client until the payment amount reflects as freely transferrable funds in the nominated bank account of **AD**. It remains the responsibility of the client to confirm the correct bank details of **AD** (in written and verbal form) before making payment to **AD**.

5. **LEGAL AND GENERAL MATTERS:**

5.1. All equipment and material, irrespective of whether delivery has taken place, will remain the property of **AD** until full and final payment for same are made by the client.

5.2. Ownership of any materials / installations conducted by **AD** will not pass to the client, notwithstanding the nature of installation. **AD** specifically reserves –

5.2.1. ownership of any materials / installations conducted on the client's property until payment has been made in full; and

5.2.2. the right to remove such materials / installations in case of non-payment.

5.3. Risk of damage or loss of all material shall pass to the client upon delivery and the client undertakes to comprehensively insure the same until ownership thereof passes to it. The client fully indemnifies **AD** against any and all loss / damage contemplated herein.

5.4. Risk of damage or loss of **AD's** machinery and equipment shall pass to the client upon entry onto the property (designated site) of the client and will pass back to **AD** once the same vacates the client's property (designated site). The client fully indemnifies **AD** against any and all loss / damage to its machinery and equipment contemplated herein and specifically whilst it is situated on the client's property (designated site).

5.5. Save for an emergency or to prevent damage / loss, the client may not move, transport or take possession of any machinery, equipment or materials without the express prior written consent of **AD**.



- 5.6. All delivery / installation timelines or performance parameters provided are indicative only a non-binding on **AD**.
- 5.7. **AD** reserves the right within its sole and absolute discretion to replace / provide alternative goods / materials of a similar quality and / or quantity to that ordered by the client, and to increase the cost component thereof, should it be unable to provide any goods / materials for any reason.
- 5.8. Any warranty or guarantee provided by **AD** will be immediately nullified and void should any installation, goods or **Services** be tampered / interfered with or altered by the client in any manner.
- 5.9. **AD** accepts no responsibility and will not be held liable for –
- 5.9.1. damage to the client's property or the injury / death of any person in rendering the **Services** to the client; or
- 5.9.2. any consequential damages, including loss of profits, any delictual liability of any nature or howsoever caused; or
- 5.9.3. any damage arising from any misuse, abuse or neglect of the goods or **Services** by the client directly or indirectly related to the installation.
- 5.10. The client indemnifies **AD**, without limitation, against damage to **AD's** property, or the injury / death of its employees, whilst **AD** is in the process of rendering the **Services** at the client's premises. This indemnification applies from commencement of the **Services** until the date of finalisation thereof, irrespective of whether the **Services** are actively rendered.
- 5.11. **AD** will at all times have the right to enter upon the client's premises and remove any of its property for any reason whatsoever. Neither the client nor any other person associated with the client may restrict **AD's** access to the property to do so. The client herewith provides its irrevocable consent to adhere to this clause.
- 5.12. Should any invoices remain unpaid after the due date for payment, **AD** will have the right to immediately enter onto the premises of the client without any prior notice at any time, and proceed to block or in any other manner render the functioning / operation of the installation or any part thereof inoperable. The client may under no circumstances remove any



such blockages or interfere with any other act of **AD** in terms of this clause. Should it be found that the client has acted in any manner which breaches the provisions of this clause, the client shall immediately be liable to a penalty to the value of USD 250, 000.00 (Two Hundred and Fifty Thousand Dollars).

- 5.13. **AD** will not be responsible for any links to other third party websites from its own website or the terms of use of such other (third party) websites. The responsibility remains that of the client to acquaint itself fully with the terms and conditions of any links prior to accepting the same.
- 5.14. The contents of **AD's** quotation documentation, design drawings, all communications with a client and / or any other information / documentation not freely available in the public domain, are and must be treated as strictly private, confidential and may not be disclosed by the client without **AD's** prior written consent.
- 5.15. All intellectual property, trade name, trademark, information and / or documentation of **AD** shall remain its sole and exclusive property. The client will not obtain any proprietary rights of any nature thereto.
- 5.16. **AD** may notify the client of any force majeure event preventing it from being able to render the **Services** to the client. The client shall have no claim against **AD** in such event and will not be entitled to terminate the contractual relationship with **AD**. A force majeure event is an event outside of the control of the parties and includes any natural disasters, war, fire, flood, civil disturbance, riot, state of emergency, strike, lockouts, pandemics, the inability to secure labour, materials and / or supplies.
- 5.17. **AD** reserves the right, within its sole and absolute discretion, to terminate the agreement unilaterally for any reason with the client at any stage. The client will remain fully liable for payment of all costs and fees of **AD** (including without limitation any work conducted, costs / expenses incurred, use of machinery / equipment) up to the point in time that the notice of termination. This clause shall apply, mutatis mutandis, if the client elects to cancel the agreement / installation at any stage.



- 5.18. **AD** may immediately terminate any **Services** if the client is in breach of any term set out herein and fails to remedy such breach within 3 (three) days of notice from **AD** to do so, or the client makes any attempt of compromise with its creditors, is liquidated or sequestrated.
- 5.19. The client must inform **AD** in writing within 7 (seven) days of any changes of control, directors, trustees, members, shareholders, owners or partners of the client. Should the client fail to do so, its representatives, directors, members, trustees, owners or partners accept personal liability for any damages / loss suffered by **AD** as a direct or indirect result of such failure.
- 5.20. Any issues concerning the goods / **Services** rendered by **AD** to the client may only be subjected to the dispute resolution process below after the client afforded **AD** a period of 60 (sixty) days to remedy such issue.
- 5.21. Should a dispute arise between **AD** and the client, which dispute is not resolved between the parties through negotiation within a period of 5 (five) business days, the client must declare a formal dispute in writing (setting out the full extent thereof) and refer the matter to be resolved by way of mediation. Failing resolution the parties will refer the matter to the Arbitration Foundation of Southern Africa in accordance with its rules.
- 5.22. The client expressly agrees that no debt owed by it to **AD** will become prescribed before a period of 6 (six) years have lapsed from the date on which the debt falls due.
- 5.23. If any provision of these terms and conditions are rendered invalid, void, illegal or unenforceable in any respect under any statute, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any manner and shall remain effective and binding on the parties.
- 5.24. Should **AD** institute any legal proceedings against a client to enforce any obligation or claim any amount, the client and its representative irrevocably agrees that they will be held liable (personally and / or jointly and / or severally as co-principal debtors) for the payment of any



successful claim against them and pay **AD's** legal costs on an attorney and client scale.

- 5.25. No waiver or relaxation of any obligation by **AD** will of force and effect unless reduced to writing and signed by **AD**.
- 5.26. The client agrees that neither **AD** nor any of its employees will be liable for any innocent misrepresentations made to the client.
- 5.27. **AD** accepts no responsibility for any work done or damage caused on a client's premises if the title deed, servitude, environmental matter or any other documented agreement prevents, restricts or prohibits the **Services** to be performed. **AD** is not responsible to conduct any form of due diligence in this regard and relies solely on prior written notice of the client who is responsible to ensure that no such restrictions apply.
- 5.28. The client chooses the address provided to **AD** on the quotation documents as its *domicilium* address for purposes of receiving any notices / communications in terms of the agreement for the provision of the **Services** between them.
- 5.29. Any communication and attachment sent to the email address of the client (through which any previous communication was received) shall serve as sufficient delivery and effective notice for purposes of service of any communication, notice or legal proceedings of any nature if sent to such email address. Receipt of delivery will be regarded as the first business day following the day on which the communication was sent.
- 5.30. These terms and conditions are governed by the laws of the Republic of South Africa.

6. **ACKNOWLEDGEMENTS:**

- 6.1. By signing the quotation document, the client or the representative of the client warrants his / her authority to enter into the agreement with **AD** and irrevocably consents and agrees to implement the agreement, pay **AD** in full and to be fully bound by these terms and conditions.
- 6.2. By signing the quotation, the client or its representative / signatory acknowledges, accepts and agrees that he / she will be personally bound



together with the client towards **AD** (personally and / or jointly and / or severally as co-principal debtors) for the performance of all obligations of the client as set out in these terms and conditions.

- 6.3. The client acknowledges that it does not rely on any representations made by **AD** other than those contained in this agreement. Any specifications, prices, performance figures, advertisements, brochures and other technical data provided by **AD** in respect of the goods or **Services** do not form part of the agreement between the parties.
- 6.4. The client acknowledges that it will not -
- 6.4.1. abuse, harass, threaten, impersonate or intimidate any person associated with or employed by **AD**; or
 - 6.4.2. post, transmit, or cause to be posted or transmitted, any content that is libellous, defamatory, obscene, abusive, offensive, profane, or infringes on **AD's** rights or the rights of any other person associated with or employed by **AD**; or
 - 6.4.3. communicate with **AD** or any person associated with or employed by **AD** in an abusive or offensive manner; or
 - 6.4.4. utilize, distribute, disclose, replicate or use the contents of the website, quotation documentation, design drawings and communication, information or documentation with clients in any improper manner which has not been consented to in writing by **AD**.