

TERMS AND CONDITIONS
(Version 03 – modified 23/12/2008)

TRADES MONITOR AUST PTY LIMITED

PO Box 474, Kingsford NSW 2032
Phone: 1300 558 168 Fax 1300 559 739
info@tradesmonitor.com.au

Trades Monitor and the Customer acknowledge and agree that the Account Application is to be read in conjunction with these Terms and Conditions and that both parties agree to abide by these Terms and Conditions.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Account Application means the Account Application signed by the Customer

Agreement means the contract between Trades Monitor and the Customer that is set out in the Account Application and these Terms and Conditions.

Cash Target Rate means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the cash target rate.

Commencement Date is the commencement date in the Account Application.

Contractors means persons who contract to provide services to the Sites.

CPI is the Consumer Price Index for Sydney on the date published by the Australian Bureau of Statistics for the date referred to in clause 5 of **Schedule 3**.

Customer means the person identified as the Customer in the Account Application.

Effective Date means the agreed date of completion of Milestone 3, in **Schedule 4**.

Fee means the fee shown in the Account Application.

GST has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

GST Law has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether State, Federal or otherwise.

Payment means any amount payable under or in connection with the Agreement including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

Services mean the services and / or products to be supplied by Trades Monitor under this Agreement as set out in **Schedule 1**.

Site means a company, a freehold property, a strata scheme (including a strata corporation, a strata company, community association, or a body corporate or owners corporation that is incorporated by registration of a plan of subdivision) or a lot or unit in a strata scheme.

Tax Invoice has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

Term means the term described in the Account Application and commencing on the Effective Date.

Total Fees Payable means the total fee payable by the Customer calculated in accordance with **Schedule 3**.

Trades Monitor means Trades Monitor Aust Pty Ltd (ACN 134 140 051) as trustee for The Trades Monitor Unit Trust (ABN 47 498 711 426)

1.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa;
- (b) Words importing a gender include any gender;
- (c) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (d) A reference to any thing includes a part of that thing;
- (e) References to parts, clauses, parties, annexures, exhibits and schedules are references to parts and clauses of, and parties, annexures, exhibits and schedules to, the Agreement and form part of the Agreement;
- (f) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) A reference to a party to any document includes that party's successors and permitted assigns;
- (h) A reference to *include* or *including* means *includes, without limitation, or including, without limitation*, respectively;
- (i) A reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has powers or functions removed (*defunct body*), means the agency or body which performs most closely the functions of the defunct body;
- (j) Where the day on or by which anything is to be done is not a working day, that thing must be done on or by the preceding working day; and
- (k) To the extent that there is any inconsistency between the schedules and attachments to the Agreement with the rest of the Agreement, the schedules and attachments shall prevail.

2. Appointment and Duties of Parties

2.1 Trades Monitor is appointed by the Customer to provide the Services identified in **Schedule 1** and accepts that appointment.

2.2 The Customer must do the things in **Schedule 2** when reasonably required by Trades Monitor.

3. Termination

3.1 The Customer may terminate the Agreement at any time by giving Trades Monitor one month's written notice stating that they intend to terminate the Agreement on a specified date.

3.2 Trades Monitor may terminate the Agreement at any time by giving the Customer three months written notice that they intend to terminate the Agreement on a specified date.

3.3 Termination of the Agreement will not affect any right or remedy of the Customer or Trades Monitor in respect of a breach of the Agreement.

3.4 If no notice is given by the Customer to Trades Monitor at least one month prior to the expiry of the Term, then the Agreement will continue on the same terms and conditions to the expiration of one year after the expiry date of the Term. That date, one year after the original expiry date, will then become the new expiry date.

4. Payment

4.1 The Customer agrees to pay Trades Monitor for the performance of the Services in accordance with **Schedule 3**.

4.2 The first Tax Invoice for Payment (of the activation costs) will be issued and will be payable on the completion of Milestone 3 in **Schedule 4**. After that, Tax Invoices will be issued for each year of the term in arrears and will be issued annually on each anniversary of the Effective Date.

4.3 At least 14 days prior to the anniversary of the Effective Date, the Customer must advise Trades Monitor of the number of Sites under its management for the purposes of invoicing. This is not required where the Customer is paying an annual fixed fee.

4.4 Trades Monitor will submit a Tax Invoice to the Customer for the Total Fee Payable in accordance with **Schedule 3**.

4.5 Trades Monitor may charge interest on unpaid Total Fees Payable if the Customer defaults in Payment. The Customer will have defaulted in Payment when a Tax Invoice has been provided to the Customer by Trades Monitor and that Tax Invoice remains wholly or partly outstanding 30 days after the Tax Invoice was provided to the Customer.

4.6 The rate of interest that may be charged on overdue payments is the rate that is equal to the Cash Target Rate, as at the relevant date, increased by 2 percentage points.

4.7 In the event that a Customer defaults in Payment, Trades Monitor may immediately cease the provision of Services to the Customer.

5. Privacy

5.1 The parties must:

- (a) Not communicate confidential information about a person without the prior approval of the person;
- (b) Take all reasonable steps to protect the confidential information it holds from misuse and loss and from unauthorised access, modification or disclosure; and
- (c) Restrict access to confidential information to those staff and personnel who require such information, and only to the extent necessary, to meet its obligations under the Agreement.

6. The Customer must:

Restrict to its employees and principals information provided by Trades Monitor, unless otherwise authorised by the Contractor or permitted in accordance with the Privacy Law.

7. Miscellaneous

7.1 Entire Agreement

The Agreement represents the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, understandings and negotiations of the parties in relation to this Agreement.

7.2 Variation

Trades Monitor may vary these Terms and Conditions from time to time and an updated version of the varied Terms and Conditions will be published on its website. The Customer will be deemed to have been given notice of any variation 7 days after Trades Monitor publishes the changes on its website and notifies the customer of the variation.

7.3 Trades Monitor Indemnity

To the extent permitted by law, the Customer indemnifies Trades Monitor in respect of any liability for any loss, damage, costs or expenses, however caused, which may arise directly or indirectly in respect of any breach of this Agreement by the Customer or any negligence of the Customer.

7.4 Customer Indemnity

To the extent permitted by law, Trades Monitor indemnifies the Customer in respect of any liability for any loss, damage, costs or expenses, however caused, which may arise directly or indirectly in respect of any breach of this Agreement by Trades Monitor or any negligence of Trades Monitor.

7.5 Applicable Law

The law of this document is the law of the State of New South Wales. The parties irrevocably submit themselves to the exclusive jurisdiction of the Courts of New South Wales.

7.6 Costs

Each party must pay its costs and expenses in respect of the negotiation, preparation and execution of the Agreement.

7.7 Severance

If any provision of this Agreement is held to be invalid or unenforceable in any way, the remaining provisions will not be affected and the Agreement will be interpreted so as to most nearly give effect to the intentions of the parties.

8. Insurance

Trades Monitor will maintain professional indemnity insurance for an amount in respect of any claim or event of not less than \$10 million.

9. Disputes

9.1 If a dispute arises out of or relating to this Agreement (including any dispute about the meaning, performance, validity, subject matter, breach or termination of this Agreement) (Dispute), any court or arbitration proceedings shall not be commenced by or against either party, their successors or assigns, relating to the Dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

9.2 The party claiming that a Dispute has arisen under or in relation to this Agreement must give written notice to the other party to the Dispute, specifying the nature of the Dispute.

9.3 Parties must not commence proceedings (except in the case of urgent interlocutory proceedings) in respect of a dispute before 28 days have expired since the date of service of a notice, under Clause 10.3.

9.4 The parties must seek to resolve the dispute in good faith. Without limiting that obligation, the parties may seek to resolve the dispute with the aid of an independent third party such as a mediator.

9.5 Where the parties agree to the use of a mediator to resolve the dispute the parties are to jointly appoint the mediator. In the event that the parties are unable to agree on the appointment of a mediator then the President of the Law Society of New South Wales (on the application of either party) shall nominate the person who will select the mediator and determine the mediator's remuneration.

9.6 The parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.

9.7 A legal representative acting for any of the parties may participate in the mediation.

10. Notices

10.1 Any notice delivered under this Agreement will be in writing and may be served by post, facsimile or electronic transmission or by hand to the party's address for service of notices that is included on the Account Application.

10.2 Either party may change their postal, facsimile, e-mail or office address by written notice to the other party.

10.3 A notice or document is deemed to have been received:

- a) If it is delivered by hand, at the time of delivery;
- b) If it is delivered by post, the next business day;
- c) If it is delivered by facsimile, when the sender receives a confirmation message from the receiver.
- d) If delivered by e-mail, the next business day, unless the sender receives notification that that e-mail failed.

SCHEDULE 1

Stage 1.

Services to be provided by Trades Monitor

1. Trades Monitor will provide the Customer with a sample letter that will be sent to each Contractor explaining the purpose of the 'questionnaire' attached to the letter. The letter will be mailed at Trade Monitor's expense.
2. Trades Monitor will contact each Contractor based on the information supplied by the Customer and request information relevant to their trade or profession.
3. When requested, Trades Monitor will provide the Customer with a report of those Contractors it has not been able to contact after at least 2 attempts.
4. Trades Monitor will confirm and verify, to the best of its ability, that all of the information provided to the Contractor, is current, correct and related to the name of the entity. Trades Monitor will also verify the business structure of the entity i.e. individual/sole trader, partnership, company or trust.
5. Trades Monitor will obtain and retain current Certificates of Currency for each insurance policy held by the Contractor.
6. Trades Monitor will monitor and verify that each Contractor's licences and insurances remain current while they are on the Customer's database.
7. Where available, Trades Monitor will record the value of each Contractor's insurance policy in the database.
8. Trades Monitor will provide an online service so that Customers can access Contractors' insurance documents and from time to time other Contractor documents.
9. Trades Monitor will provide a system that allows the Customer to assign, cancel and reissue a unique password for the purposes of maintaining security of access to the database.
10. Trades Monitor will provide a 24 hour, seven day internet service that allows the Customer to access all available data on their Contractors. This service will be password protected so only the Customer, or others approved by the Customer, will have access to the Contractor information.
11. Trades Monitor will supply instruction manuals for the Customer and other persons nominated by the Customer, from time to time.
12. If Trades Monitor receives advice from a Customer that they no longer wish to use a Contractor, then Trades Monitor will remove that Contractor from the Customer's Contractor list if it will not affect or damage the Customer's file.

Stage 2.

Additional Services provided by Trades Monitor if requested by the Customer

1. Upon completion of Stage 1 and at no additional cost to the client, Trades Monitor will re-contact all the Customer's nominated Contractors giving them the opportunity to become Occupational Health and Safety Accredited. All fees are payable by the Contractors if they choose to be accredited and pass the accreditation process. The fee covers the cost of the auditing/assessment process, providing a help desk to assist your Contractors in meeting the Occupational Health and Safety Standard, and the additional responsibility Trades Monitors assumes in accrediting them to this level.
2. Trades Monitor informs the Contractors in its letter to them, that if they have already undertaken an Occupational Health and Safety audit from another company to the level of AS/NZS 4801:2001, they may simply provide evidence of this to Trades Monitor, and Trades Monitor will add them to our register and inform our clients of their current Occupational Health and Safety accreditation. There is no fee from Trades Monitor in this situation.
3. The information on whether a Contractor has been accredited will be available through Trades Monitor's website based software.
4. Trades Monitor will provide a non compliant Contractor with the steps needed to gain compliance status, and assist them throughout that process.

SCHEDULE 2

The Customer must:

1. Supply Trades Monitor with an electronic download of data from their software system that includes the name, ABN and contact details.
2. Supply Trades Monitor with Stage 1 and Stage 2 letters (as appropriate) for Trades Monitor to use in contacting the Customer's Contractors.
3. Supply Trades Monitor by e-mail, or online through Trades Monitor's website, with the name/s and contact details of any new Contractors that the Customer requires to have compliance details obtained and verified in a usable format.
4. Advise Trades Monitor, within 14 days of the Effective Date, and each anniversary of the Effective Date, of the number of Sites under its management where applicable.

SCHEDULE 3

FEES

1. On the completion of Milestone 3 in **Schedule 4**, Trades Monitor will provide the Customer with a Tax Invoice for the Total Fees Payable.
2. Thereafter, on each annual anniversary of the Effective Date for the duration of the Term Trades Monitor will provide the Customer with a Tax Invoice for the Total Fees Payable for that year in arrears.
3. On receipt of each Tax Invoice the Customer must pay the fees.
4. **Calculating the Total Fees Payable**
- 4.1 If the Customer chooses fee option 1 in the Account Application, the Total Fees Payable shall be calculated by multiplying the Fee by the number of Sites. Initially, the number of Sites shall be the number notified by the Customer in accordance with Milestone 3 in **Schedule 4**. Thereafter, the number of Sites shall be notified in accordance with Clause 4.3 of these Terms and Conditions.
- 4.2 If the Customer chooses fee option 2 in the Account Application, the Total Fees Payable shall be calculated by multiplying the Fee by the number of Contractors. The number of Contractors shall be notified by the Customer in accordance with Milestone 3 in **Schedule 4**. Thereafter, the number of Contractors shall be the maximum number of Contractors in the 12 months preceding each anniversary of the Effective Date.
- 4.3 If the Customer chooses fee option 3 in the Account Application, the Total Fees Payable shall be the fixed annual fee stated in the Account Application.
5. On each annual anniversary of the Effective Date the fees, including a fixed annual fee referred to in paragraph 4.3 of this Schedule, shall be increased by the CPI. Where it results in a decimal amount, then this amount must be rounded up to the nearest whole dollar.

SCHEDULE 4

MILESTONES

MILESTONE	TARGET DATE
Milestone 1 <ul style="list-style-type: none">○ Signed Agreement	Commencement Date
Milestone 2 <ul style="list-style-type: none">○ Letter of instruction is delivered to Trades Monitor○ List of Contractors are provided to Trades Monitor○ The Customer returns its review of queried Contractors to Trades Monitor	<p>1 week after Commencement Date</p> <p>1 week after Commencement Date</p> <p>3 weeks after Commencement Date</p>
Milestone 3 <ul style="list-style-type: none">○ Trades Monitor to activate system and training of customer supervisor and staff○ Under Fee Option 1, Customer to provide Trades Monitor within 7 days of the activation of the system with the number/details of Sites for invoicing purposes.	<p>2 months after Commencement Date</p> <p>2 months after Commencement Date</p>