

1. Definitions and Interpretation

- 1.1. **Definitions**
we, us or our is a reference to SA Cable & Pipe Locating.
you or your is a reference to the person to whom we are providing our Services (as described in our services agreement) and who is required to pay for the Services we provide.
Claim includes any claim, including a notice, demand, debt, account, action, expense, damage, loss, cost, lien, liability, proceeding, litigation (including legal costs), investigation or judgement of any nature, whether known or unknown.
Consumer Guarantee means a consumer guarantee as set out in Part 3-2, Division 1 of the Australian Consumer Law.
Loss means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.
Parties is a reference to both us and you.
Services means the advice we will provide in connection with the location of cables and pipes. The precise Services we will be providing to you will be stated in our services agreement and/or as we agree from time to time.

2. General

- 2.1. SA Cable & Pipe Locating agrees to supply the Services to you pursuant to the terms of this agreement. The terms contained in our services agreement form part of the contract.
- 2.2. The Parties acknowledge that this agreement constitutes the entire agreement between themselves and no other terms and conditions of agreement have any effect insofar as this agreement is concerned and may not be imported or implied into this agreement without the consent of the party first having been obtained in writing.
- 2.3. This agreement does not create a relationship of fiduciary, employee, partnership or joint venture between the parties, and SA Cable & Pipe Locating acts as an independent service provider only.
- 2.4. SA Cable & Pipe Locating will endeavour to take reasonable commercial steps to protect all personal information provided by you.
- 2.5. If any provision of this agreement is illegal or unenforceable in any relevant jurisdiction it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these terms and conditions
- 2.6. Clauses 5.1.1, 5.2, 5.4, 5.5, 5.6, 5.8, 5.9 and any indemnities contained herein survive termination or expiration of this Agreement
- 2.7. This Agreement is governed by and is to be construed in accordance with the laws applicable from time to time in the State of South Australia
- 2.8. The parties submit to the non-exclusive jurisdiction of the courts of South Australia

3. Contract

- 3.1. A contract between the Parties will come into being in one of two ways:
 3.1.1. when you sign our services agreement, we and you will enter into a legally binding contract on the date you sign.
 3.1.2. where the Parties agree orally that we should provide the Services, then there will be a legally binding contract on the date of our oral agreement, which will incorporate these terms and conditions.
- 3.2. We suggest that before you sign our services agreement or orally agree to us providing Services that you read through these terms and conditions. If you have any questions concerning them please ask us.
- 3.3. You should keep a copy of these terms and conditions for your records.
- 3.4. Once the Parties have entered into a legally binding contract, we will normally start providing the Services to you straight away or on a date agreed between us without further discussion with you. Occasionally the Services will be provided at some other date or time or be dependent on a number of factors.

4. Price, Costs and Payment

- 4.1. We normally charge for our Services on an hourly basis. Our hourly rates, excluding GST, for performing the Services are variable dependant on the services requested by you.
- 4.2. All amounts stated (whether orally or in writing) are exclusive of GST.
- 4.3. As we provide an estimate we may need to charge you a higher amount than stated in the estimate. This can occur for a number of reasons, in particular where:
 4.3.1. what you require us to do changes, or the amount of work or Services you require us to provide increases or is different to what we and you agreed before we started performing the Services; or
 4.3.2. when we start performing the Services it becomes apparent that the amount of Services we will need to perform or the type of work that is involved is different to what we agreed before we started performing the Services and we could not reasonably foresee this before we started performing the Services.

- 4.4. Where the amount of work involved is greater than that stated in our initial estimate then the following will happen:
 4.4.1. if the amount of extra time we need to spend to finish performing the Services will mean that the extra amount payable by you will not exceed 25% of the amount stated in the estimate, then we will carry on providing and completing the Services without contacting you and obtaining your agreement;
 4.4.2. otherwise we will not continue performing the Services and we will seek your approval for the extra amount that you will need to pay, unless it is not possible to contact you within a reasonable time.
- 4.5. Payment for our Services is to be made on completion of the Services unless otherwise agreed between the Parties
- 4.6. If you fail to make payment within 7 days of completion of the Services or as otherwise agreed between the Parties we may:
 4.6.1. Charge interest on the outstanding amount at the rate of 2% per year above the base lending rate of ANZ Bank on any outstanding amounts, accruing daily, if those outstanding amounts remain unpaid for more than 7 days from the date the outstanding amounts became payable
- 4.7. You will not refuse to pay any amount owing to us where there is only a minor or inconsequential defect or error in the performance of the Services

5. Limitation of Liability and Indemnity

- 5.1. SA Cable & Pipe Locating endeavours to provide you with information that is accurate and reliable.
 5.1.1. You acknowledge that SA Cable & Pipe Locating may receive information from third party service providers and SA Cable & Pipe Locating makes no warranties as to the completeness or precision of that information.
- 5.2. You acknowledge that SA Cable & Pipe Locating cannot and does not purport to provide you with information that is complete, exact or precise, and recommends that on receipt of the Services you act with care and caution.
- 5.3. SA Cable & Pipe Locating Services locate to Australian Standards AS 5488, Classification of Subsurface Utility Information (or its replacement from time to time)
 5.3.1. SA Cable & Pipe Locating gives no other express or implied warranties or representations under this agreement in relation to the Services.
- 5.4. The Services are provided to you only and are not to be relied upon by any third party
- 5.5. Subject to clause 5.7 SA Cable & Pipe Locating is not liable for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the agreement except to the extent that such liability may not lawfully be limited or excluded. For the avoidance of doubt this extends to any employees, contractors, agents, representatives, licensees or permitted assigns of SA Cable & Pipe Locating.
- 5.6. You agree to indemnify and hold SA Cable & Pipe Locating harmless to the full extent permitted by law for any Loss or Claim whatsoever arising in connection with the supply of Services to you.
- 5.7. The limitation of liability set out in clause 5.5 will not apply to any liability arising as a result of or in connection with fraud or wilful misconduct.
- 5.8. To the maximum extent permitted by law SA Cable & Pipe Locating limits its liability for any Loss or Claim in connection with this agreement to the price of the Services.
- 5.9. To the maximum extent permitted under the Australian Consumer Law, SA Cable & Pipe Locating's liability for breach of a Consumer Guarantee, if the Consumer Guarantee's apply at law, is limited to any one or more of the following at our election:
 5.9.1. The supplying of the Services again; or
 5.9.2. The payment of the cost of having the Services supplied again by an alternative supplier.
- 5.10. You agree to indemnify SA Cable & Pipe Locating against any and all liabilities, loss, expenses, costs and claims of any kind suffered by us or our employees arising out of
 5.10.1. Any incomplete information provided by you to us or the failure to provide information to us, and
 5.10.2. Any failure by you to use or correctly or accurately interpret information supplied to you.