

Agreement for Consulting Services Standard Terms and Conditions

Definitions:

“**Agreement**” is defined in clause 1.

“**Client**” means *client engaging Design Engineering Ptd Lty*, its representatives and authorised agents.

“**Company**” means Design – *Design Engineering Ptd Ltd* ABN 95 627 213 594

“**Engagement Letter**” means the letter or proposal document from the Company to the Client.

“**Fees**” means the fees payable to the Company by the Client for the Services as set out in the company’s schedule of rates.

“**Project**” is defined in the Engagement Letter.

“**Reimbursable Expenses**” means all expenses reasonably incurred by the Company in performing the Services, or as defined in the Engagement Letter.

“**Relevant Law**” and “**Relevant Jurisdiction**” are defined in the Engagement Letter.

“**Services**” means the services to be provided by the Company to the Client as stated in the Engagement Letter and such further services as are agreed between the Client and the Company.

Standard Conditions of Contract:

The Agreement

The "Agreement" means the agreement for the Company to provide the Services to the Client. The Agreement comprises

of the Engagement Letter, these Standard Conditions of Contract and any other documents referred to in the Engagement Letter and /or Proposal. The Agreement represents the entire

understanding of the parties and supersedes all prior agreements, arrangements, representations or understandings (if any) of the parties in respect of matters dealt with by this Agreement. The documents which are part of the Agreement are mutually explanatory. If there is any ambiguity or discrepancy in the documents, the order of precedence shall be firstly the Engagement Letter, secondly these Standard Conditions of Contract and thirdly any other documents referred to in the Engagement Letter, unless the parties agree otherwise in writing.

Retrospectivity

The Agreement applies to the performance of the Services regardless of whether the Agreement was in force at the time the Services were performed.

Providing the Services

The Company must exercise reasonable care, skill and diligence in providing the Services.

The Company will provide the Services in a manner which, where it is within the Company's control, facilitates the timely completion of the Project.

1. The Company will, where required by this Agreement and practicable, coordinate the provision of the Services with the activities of other parties engaged by the Client and at the direction of the Client.
2. The Client must provide details, access and permissions required for the Company to provide the Services.
3. If the Company considers the Client has not sufficiently complied with clause 6 to enable the Company to provide the Services in accordance with this Agreement, the Company will

advise the Client. The Client must then promptly provide the further assistance necessary.

Change in Scope of Services

4. If the Company or the Client becomes aware of any matter which will change or has changed the scope or timing of the Services or the Project, then it will as soon as practicable give notice to the other party of the matter and as far as practicable, details of the change.

Work at the Client's Premises

5. Where servants, agents or sub-contractors of the Company carry out work at the Client's premises, the Company, its servants, agents or sub-contractors carrying out work at the Client's premises will comply with any reasonable direction of the Client regarding occupational health and safety. The Client must maintain at those premises the safety procedures, equipment and standards necessary to comply with any Relevant Law and to ensure a safe workplace. For that purpose any servants, agents or subcontractors of the Company are deemed to be under the control of the Client. The Client is fully responsible for, and must indemnify and hold harmless the Company against any claim, loss or damage of any kind whether for breach of contract or statutory duty, negligence or otherwise, arising in any way out of the failure of the Client to comply with the requirements of this paragraph.

Where servants, agents or sub-contractors of the Company carry out work under the direction of the Client, the Client will be fully responsible for, and must indemnify and hold harmless the Company against any claim, loss or damage of any kind, whether

arising in contract, in tort, in equity or by statute connected in any way with the services, project or relationship established by this Agreement, in respect of the acts or omissions of the Company, its servants, agents or sub-contractors.

Rectification Work

6. Notwithstanding any other clause of this Agreement, the liability of the Company in respect of any claim arising out of or in connection with the Services, the Project or the relationship established by this Agreement, whether arising in contract, in tort, in equity or by statute is limited to the repetition by the Company in accordance with the Agreement of any part of the Services which is shown to be deficient.

Services provided for Exclusive Benefit of Client

7. The Services are provided for the exclusive benefit of the Client and the Company accepts no liability to any person other than the Client in respect of any claim arising out of or in connection with the Services, the Project or any relationship established by this Agreement whether arising in contract in tort, in equity or by statute. If the Client allows any third party to enjoy the benefit of the Services, the Client will be fully responsible for, and must indemnify and hold harmless the Company against any claim by that third party arising out of or in connection with the Services, the Project or any relationship established by this Agreement, whether arising in contract, in tort, in equity or by statute.

Mutual Limitations of Liability

8. Notwithstanding any other clause of this Agreement, the liability of the Client and the Company to each other must be reduced proportionately to the extent that a breach of contract, the failure to comply with a Relevant Law, or the negligent act or omission of a party or its consultants, agents or other contractors contributed to the loss, damage, costs, claims, liability, expense, outgoing or payment incurred by the other party.
9. Notwithstanding any other clause of this Agreement, neither Party is liable to the other under this Agreement, in tort, in contract, in equity, by operation of statute or otherwise for any kind of:
- (a) indirect or consequential loss or damage;
 - (b) loss of opportunity;
 - (c) loss of revenue;
 - (d) loss of profit or anticipated profit;
 - (e) loss of contracts;
 - (f) loss of goodwill;
 - (g) loss arising from business interruption; or
 - (h) liability arising out of or in connection with pollution or contamination;
- arising out of or in connection with this Agreement incurred or suffered by a party, or any other person.

Insurance

10. The Company and the Client must each have insurance cover for any loss or damage in adequate amounts and for the risks each bears under this Agreement as required by statute or otherwise as is reasonable in the circumstances. The Company and the Client must each have a Public Liability insurance policy for an amount adequate to cover any risk that party bears under this Agreement.

Force Majeure

11. If the Company or the Client become unable in part or whole to perform this Agreement as a result of force majeure it must promptly notify the other party and suspend performance under this Agreement (other than under clauses 16, 17 and 18) while the force majeure continues and resume performance as soon as practicable.

Confidential Information

12. (a) "Confidential Information" means all information which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to a party and includes concepts, technical and operational information owned or used by a party and details of any clients, customers or suppliers of a party.
- (b) The Company must not disclose, or allow to be disclosed to any person, any of the Confidential Information of the Client without the prior written consent of the Client.
 - (c) The Client must not disclose, or allow to be disclosed to any person, any of the Confidential Information of the Company without the prior written consent of the Company.
 - (d) The Company must only use Confidential Information for the purpose for which it was disclosed and must not make use of Confidential Information or any part of it to the competitive disadvantage of the Client.
 - (e) The Client must only use Confidential Information for the purpose for which it was disclosed and must not make use of

Confidential Information or any part of it to the competitive disadvantage of the Company.

- (f) The Company shall be entitled to retain a copy of all documents related to the Project for its records, subject to its continuing obligations under this clause.

Intellectual Property

- 13.(a) "**Intellectual Property**" means any concept, product or process developed, discovered or used by the Company in the course of providing the services, and copyright in all drawings, specifications, software and other documents provided by the Company.
- (b) The Client is entitled to a royalty free license to use the Intellectual Property in connection with the Services only, subject to the Company receiving full payment for the Services.
- (c) Intellectual Property remains the property of the Company. The Intellectual Property must not be disclosed to third parties without the Company's permission. The supply or use of any of the Intellectual Property prior to full payment being made to the Company does not imply granting of a license for its use.
- (d) Subject to clauses 8 and 9, the Company warrants to the Client that any document, material or design provided by the Company does not infringe the Intellectual Property rights of any third party and indemnifies the Client against breach of that warranty. Subject to clauses 8 and 9, the Client warrants to the Company that any document, material or design provided by the Client does not

infringe the Intellectual Property rights of any third party and indemnifies the Company against breach of that warranty.

Duration of Agreement

- 14. Subject to clause 16, the Agreement continues until completion of the Services unless either party gives at least 7 days' notice in writing to the other Party to terminate this Agreement. If the Agreement is terminated by the Client for any reason other than the default of the Company or by the Company for the default of the Client, then the Client shall (without prejudice to the Company's accrued rights) pay to the Company all Fees due together with reimbursement of any costs and expenses incurred in contemplation of it providing the Services. If the Client terminates the Agreement as a result of a default of the Company, then the Client shall pay the Company all Fees due. Where Fees are payable other than on an hourly rate basis the Fees payable pursuant to this clause shall be calculated on a pro rata basis up to and including the date of termination.
- 15. Subject to clauses 15 and 19(ii), each party must continue to perform its obligations under this Agreement until the date of termination. Clauses 5, 6, 7, 8, 9, 12, 13, 19(i), 25 and 26 survive the termination of this Agreement for whatever reason.
- 16. If:
 - (a) in respect of all or part of the business or assets of either the Company or the Client:
 - (i) a liquidator or provisional liquidator is appointed;

- (ii) A receiver, receiver and manager, trustee, controller, official manager or similar officer is appointed;
 - (iii) An administrator is appointed, whether under Part 5.3A of the Corporations Law or otherwise; or
 - (iv) An application is made for the appointment of an administrator, liquidator or provisional liquidator; or
- (b) either the Company or the Client:
- (i) is unable to pay its debts as and when they fall due;
 - (ii) is insolvent or presumed to be insolvent under any law; or
 - (iii) is an insolvent under administration as defined in section 9 of the Corporations Law or an action is taken which could result in that event; or
- (c) either the Company or the Client commits a substantial breach of this Agreement;

Then the other party may immediately terminate the Agreement by giving written notice.

Fees and Payment

17. The Fees are calculated for performance of the Services. If:

- (a) the Company is required to perform services different or additional to those specified in the Engagement Letter as the Services; or
- (b) the nature of the Services changes; or

- (c) the cost associated with the provision of the Services is increased due to the imposition of, or increase in, the amount of any government tax, fee or charge; or
- (d) the Services are suspended other than by reason of breach by the Company;

The Company will be entitled to an additional fee agreed between the Client and the Company or, if no agreement is reached, then as reasonably determined, by the Company.

18. The Company may submit invoices to the Client for payment of its Hourly Fees, Administration Charge (5% of hourly fees) and Reimbursable Expenses (charged at plus 10%) at monthly intervals on the last day of each month and at the completion of the Services. Invoices must be supported with evidence to the Client's satisfaction substantiating the amounts claimed in the invoice. Payment of the amount referred to in an invoice is due within 30 days of the date of the invoice.

19. If the Client does not pay the amount of the invoice when it is due the Company is entitled to:

- i) charge interest to the Client at the rate of 1.25% per month from the date of the invoice until the date of payment in full; and
- ii) Suspend the provision of the Services until the date of payment in full.

20. If the Client disputes any part of any invoice submitted by the Company, the Client must pay the undisputed balance in full. In the event that any

part of a disputed amount is subsequently agreed or determined to be due, the Client must pay interest in accordance with clause 19(i) on the amount withheld.

21. The Company may include in an invoice and recover from the client, in addition to the Fees and Reimbursable Expenses, the amount of GST lawfully required to be remitted by the Company in relation to the Services.

No Assignment

22. Neither the Company nor the Client may assign its respective rights and obligations under this Agreement without the written consent of the other party.

Direct Engagement

23. No company employee or representative may undertake work directly for a client or any related or associated business of the client whilst performing the engaged services or within a period of twelve months. Should consent be given by the company for a company employee or representative to be offered and accept a position with the client a placement fee payable by the client applies. This fee will be 20% percent of the total annual remuneration (cash + superannuation etc).

Relevant Law and Jurisdiction

24. The Services to be performed pursuant to the Agreement will be performed in accordance with the Relevant Law.
25. The Courts of the Relevant Jurisdiction have non-exclusive jurisdiction to resolve any dispute

arising out of this Agreement or the performance of the Services unless the parties otherwise agree in writing to an alternative dispute resolution procedure.

Severance

26. If any part of the Agreement is contrary to law, it will not affect the enforceability of other provisions, or parts of provisions.

Signed on behalf of Design – ***Design Engineering Pty Ltd***

Print Name

Print Position / Title

Signature, date

Signed on behalf of **'The Client'** as
acceptance of clauses 1 to 26 inclusive:

Print Name

Print Position / Title

Organisation

Signature, date