

VERTEX ENGINEERING DESIGN PTY LTD TRADING TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In these Terms and Conditions, the following terms shall have the following corresponding meanings, unless the context indicates otherwise:

"Client" means the person or entity named as the "Client" pursuant to the Application for Commercial Credit Account annexed hereto and/or the person or entity named in any invoice rendered by the Contractor.

"Contractor" means Vertex Engineering Design Pty Ltd (ACN 129 122 283), its successors and assigns.

"Agreement" refers to this agreement between the Contractor and the Client incorporating these Terms and Conditions and the accompanying Fee Schedule, and where a trading account has been established, the Application for Commercial Credit Account, Terms of Trade, and *Privacy Act 1988* (Clth) notices.

"Services" include goods and shall be deemed to refer to any services obtained by the Client from the Contractor from time to time pursuant to the Application for Commercial Credit Account (where a trading account has been established) and these Terms and Conditions, including the services specified in any formal or informal scope of works forming part of the Contract Documents or as varied in writing.

"Contract Documents" refer to any quotations, proposals, scopes of works, drawings, designs, reports, electronic records and other records, concepts and documents provided by the Contractor to the Client as part of or in connection with the Services.

"Fee" means the amount specified in any formal or informal quotations, proposals, invoices or scopes of work forming part of the Contract Documents or as varied in writing

"Reimbursable Expenses" means the cost plus any percentage listed in the Fee Schedule attached hereto, of all travel and accommodation, equipment use/hire, goods/supplies purchased on behalf of the Client, third party fees and other out of pocket expenses incurred by the Contractor during the course of providing the Services.

"Legislative Requirements" include:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services; and
- (b) certificates, licenses, consents, permits, approvals and requirements of any regulatory body or organisation having jurisdiction applicable to the Services.

1.2. INTERPRETATION

- (a) Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- (b) A reference to a person includes corporation, partnership and unincorporated body.
- (c) The word "includes" in any form is not a limitation.
- (d) The clauses and headings in these Terms and Conditions are for reference purposes only and do not in any way influence or affect the meaning of these Terms and Conditions.

- (e) References to clauses are references to clauses of these Terms and Conditions.
- (f) A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under that legislation or legislative provision.

2. GENERAL

- 2.1. These Terms and Conditions and accompanying Fee Schedule may be amended from time to time by the Contractor by reasonable notice in writing or as otherwise required by law.
- 2.2. To the extent permitted by law, these Terms and Conditions and the Contractor's quotation, proposal and/or scope of works to the Client in respect of the Services:
 - 2.2.1. embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
 - 2.2.2. supersedes any previous agreements, understandings, negotiations and representations of the parties.

3. ENGAGEMENT & DELIVERY

- 3.1. All orders by the Client for Services shall be made by way of order form in writing to the Contractor and shall be deemed to be an offer by the Client to purchase the Services pursuant to these Terms and Conditions ("Order").
- 3.2. Any quotation or proposal made by the Contractor is not an offer to sell or to provide Services. The Contractor shall not be bound by any Order given by the Client in pursuance of any quotation or proposal by the Contractor until it is accepted in writing by the Contractor.
- 3.3. All Orders are subject to acceptance by the Contractor within thirty (30) days of receipt by the Contractor of the Order.
- 3.4. These Terms and Conditions shall be deemed to be incorporated into any agreement between the Contractor and the Client. Any terms and conditions contained in any Order, acceptance or other document of the Client and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 3.5. The Contractor may engage another contractor or sub-contractor to assist it in providing the Services.
- 3.6. The Client acknowledges that the Contractor, its contractors, sub-contractors and employees will at all times be provided with reasonable access, during normal working hours or as otherwise agreed to by the parties, to the Client's premises and/or any other place where the Services are to be provided for the purposes of providing a quotation and/or carrying out the Services. Should the Client fail to do so, resulting in delays to the delivery of the Services, the Contractor will be entitled to increase the Fee by such amount as is reasonable to compensate the Contractor for the additional costs incurred by it by reason of the delays.
- 3.7. In providing the Services, the Contractor will exercise the degree of skill, care and diligence normally exercised by professional contractors performing services of a similar nature. The Contractor will take all reasonable measures to inform itself of the Client's

requirements with respect to the Services and will promptly inform the Client if it considers that it has insufficient information to enable it to satisfactorily perform the Services, or becomes aware of any matter (including any inaccuracies in information provided to it) which may materially affect the scope of the Services.

- 3.8. Where the Contractor informs the Client that it requires further information to enable it to satisfactorily perform the Services, the Client must promptly provide such further information to the Contractor.
- 3.9. Any date quoted for delivery of the Services ("the Delivery Date") is an estimate only and relies on prompt receipt of all necessary information from the Client regarding the Services.
- 3.10. The Contractor will use its best efforts to meet the Delivery Date and will not be liable to the Client or any other party for direct or indirect or consequential injury, loss or damage whatsoever, including a claim for liquidated damages, by reason of any delay in delivery whether the same is due to the negligence of the Contractor or any other party, strike or any other industrial action be it of the Contractor or other party or from any other cause whatsoever. Late delivery will not be grounds for cancellation or non payment.

4. FEE & SCOPE OF SERVICES

- 4.1. The Client may, by notice in writing, request that the Contractor change the scope of the Services. Any such change must be within the general scope of the Services. Unless it is not reasonably practicable for the Contractor to do so, the Contractor will give effect to any change to the Services requested by the Client which is within the general scope of the Services.
- 4.2. Where a change to the Services is requested by the Client, the Contractor will be entitled to:
 - 4.2.1. an adjustment of the Fee by a reasonable amount reflecting the increased costs of performing the Services; and
 - 4.2.2. a reasonable extension of time for providing the Services.
- 4.3. In the instance where goods are ordered on behalf of the Client, minimum quantities and charges may apply to goods supplied.
- 4.4. The Fee may, without notice, be subject to change to reflect increases in costs of production, collection, delivery, or disposal costs.

5. PAYMENT

- 5.1. The Client shall pay to the Contractor the Fee and any Reimbursable Expenses.
- 5.2. Variations to the Contractor's scope of works after acceptance of an Order will be charged to the Client additionally, against the original Order. These charges will be calculated using the Contractor's Fee Schedule annexed hereto. Any request (verbal or written) by the Client for the Contractor to carry out additional works may constitute a variation and any such request, upon acceptance in writing by the Contractor, is deemed to be an authorisation to commence and charge for the variation work immediately.
- 5.3. The Contractor may, in its sole discretion, render invoices to the Client every month or at suitable project milestones, with a final invoice being rendered upon delivery of the Services.
- 5.4. Invoices shall be deemed to be accepted by the Client unless the Contractor is notified in writing within seven (7) days from the date of invoice of any dispute relating to the Services supplied or the invoiced amount.
- 5.5. Unless otherwise agreed in writing, the Client shall pay all amounts invoiced

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- within thirty (30) days from the date of invoice ('the Due Date').
- 5.6. Where a trading account has not been established, a 25% fee deposit is required to be paid by the Client to the Contractor prior to the supply of any Services, with the balance to be paid by the Client at the time of delivery of the Services.
- 5.7. Any payments tendered by the Client to the Contractor shall be applied as follows:-
- 5.7.1. first, to reimburse the Contractor for any collection fees or commissions, administrative costs, out of pocket expenses and legal costs referred to in sub-clause 7.2.2;
- 5.7.2. secondly, towards any interest debited or chargeable to the Client's account in accordance with sub-clause 7.2.1;
- 5.7.3. thirdly, in payment for the Services purchased by the Client (such payments being applied in the order of the age of such purchase commencing with the oldest purchases).
- 5.8. If any of the events set out in sub-clauses 5.8.1 to 5.8.6 below occur, the Contractor may at its option withhold further deliveries or cancel any contract for the sale or supply of the Services entered into between the Contractor and the Client without notice to the Client and without prejudice to any other action or remedy which the Contractor has or might otherwise have had. All moneys then owing and outstanding to the Contractor on any account whatsoever and irrespective of whether the Due Date on any invoice has occurred or passed shall become immediately due and payable:-
- 5.8.1. the Client makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
- 5.8.2. the Client, being an individual, commits an act of bankruptcy or has a controller or trustee appointed in respect of the Client's estate or any part of the Client's property or assets;
- 5.8.3. the Client, being a company, passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
- 5.8.4. a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Client;
- 5.8.5. the Client parts with possession of the goods otherwise than in accordance with clause 8 below;
- 5.8.6. the Client experiences any analogous event having a substantially similar effect to any of the events specified above.
- 5.9. Notwithstanding sub-clause 5.5 above, the Contractor may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Customer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of the Contractor shall be final and the Contractor accepts no liability or responsibility for any loss, howsoever arising, incurred by the Customer due to the operation of this sub-clause.
- 6. LIMITATION OF CREDIT**
- The Contractor may, in its absolute discretion, determine from time to time the limit to which the Client shall be entitled to purchase Services on credit ("the Credit Limit").
- 7. DEFAULT**

- If the Client fails to pay for the Services supplied to it by the Due Date, purchases Services so as to extend its indebtedness to the Contractor beyond the Credit Limit, dies, or becomes of unsound mind or permanently disabled, or any other of the events referred to in sub-clause 5.8 occurs ("Default Event") then:-
- 7.1. the whole of the sum then owing by the Client to the Contractor for all Services supplied by the Contractor to the Client shall immediately become due and payable and the Client shall not hereafter be entitled to purchase Services on credit from the Contractor unless the Contractor has agreed to same in writing, in which case, unless a contrary intention is shown in such agreement, the payment obligations contained herein shall apply;
- 7.2. The Contractor may in its absolute discretion debit the Client's account with:-
- 7.2.1. interest calculated on the portion of the Client's account overdue from time to time from the Due Date or the happening of the Default Event at the rate being 2% higher than the rate prescribed by Section 2 of the *Penalty Interest Rates Act 1983* (Vic);
- 7.2.2. all collection fees and commissions, administrative costs, out of pocket expenses and legal costs (calculated on a solicitor and own client basis) incurred by the Contractor as a direct or indirect consequence of such Default Event.
- 8. RETENTION OF TITLE**
- 8.1. All goods supplied by the Contractor to the Client shall be at the Client's risk immediately on delivery to the Client or immediately on delivery as directed by the Client or immediately on collection by the Client's transport contractor as the case may be.
- 8.2. Notwithstanding that risk or loss or damage to the goods passes to the Client in accordance with sub-clause 8.1 above, goods delivered by the Contractor shall remain the property of the Contractor until all debts owing by the Client to the Contractor have been paid, notwithstanding that payments may be made for the purpose of settlement of specifically designated claims.
- 8.3. The Client acknowledges that until title in and to the goods passes to the Client in accordance with this clause, the Client holds the goods as bailee of the Contractor and that a fiduciary relationship exists between the Client and the Contractor.
- 8.4. Until payment of all debts owing by the Client to the Contractor, the Client may sell the goods or any part thereof in the name of the Client in the ordinary course of business, but does so as a fiduciary agent of the Contractor (but the Client shall not hold itself out as such), provided that such sales shall not give rise to any obligations on the part of the Contractor and on terms which will not prejudice the Contractor's ability to obtain the sale proceeds thereof. The Client may, for the purpose of any such sale, part with possession of the goods and shall hold the proceeds of sale on trust for the Contractor in a separate account.
- 8.5. These provisions apply notwithstanding any arrangement under which the Contractor provides credit to the Customer. To the extent there is any inconsistency, these provisions shall prevail.
- 8.6. The Contractor may recover the price of the goods by legal action, and may serve a statutory demand pursuant to the *Corporations Act 2001* (Cth) and file an application for the appointment of a Liquidator to the Client, if the goods are not paid for within the Contractor's usual credit terms or any separate arrangement

- for credit made by the Contractor with the Client, notwithstanding that property in the goods has not passed to the Client.
- 8.7. Until payment of all debts owing to the Contractor by the Client, the Client shall store the goods separately and in such a manner that they are clearly identified as the property of the Contractor. The Contractor may, without prejudice to any of its other rights, without any notice, retake and resume possession of any goods which remain its property and, by its servants and agents, enter upon the Client's premises or any other place where the goods may be for that purpose, upon the happening of any of the Default Events set out in clause 7 in which event the Client's implied right to sell the goods shall immediately terminate.
- 8.8. Upon retaking possession of those goods for which payment has not been made, the Contractor shall, within a reasonable time inspect those goods and credit the Client's account with such sum as the Contractor in its absolute discretion considers to be a fair and reasonable value for the said goods after making due allowance for the price for which those goods were sold to the Client, the condition of the goods at the time of repossession, and the costs incurred by the Contractor in connection with the repossession, sorting and examination of goods.
- 9. CANCELLATION**
- 9.1. No cancellations shall be accepted by the Contractor for Services following acceptance of Orders, subject to any rights conferred under the *Trade Practices Act 1974* (Cth) or such cancellation being accepted in writing by the Contractor.
- 9.2. Where cancellation is accepted by the Contractor, the Contractor shall be entitled to charge the Client on a pro-rata basis for Services provided by the Contractor up to and including the date of cancellation.
- 10. OWNERSHIP, USE & NATURE OF MATERIALS**
- 10.1. Except where specifically noted in writing, ownership, title and other intellectual property rights of any design used throughout the term of the Services is by the Contractor.
- 10.2. The Contractor is not required to provide the Client with an editable version of any of the Contract Documents. The Client must not, without the prior written consent of the Contractor, alter or authorise or permit the alteration of any editable version of the Contract Documents.
- 10.3. The Client has a licence to use the Contract Documents for the purposes for which those documents are prepared and provided to the Client. The Client must not use (including make copies of) the Contract Documents for any purpose other than that for which they were originally prepared. This license expires on termination of the Services.
- 10.4. The Contractor, unless specifically instructed otherwise in writing by the Client, is entitled to refer to the Services and any related project in respect of which the Services are provided and identify the Client, for the purposes of promoting the services of the Contractor to third parties.
- 11. CONSTRUCTION PROJECTS**
- 11.1. Where the Services are provided in connection with a project involving the construction (including refurbishment) of works ("Construction Work") the Client must:
- 11.1.1. require any construction contractor it engages to include the Contractor as an additional insured on its construction contractor's all risk and public liability insurance policies in respect of the Construction Work; and

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11.1.2. if any Legislative Requirements relating to occupational health and safety require the appointment of a person to be responsible for the overall management or safety at the site for the Construction Work ("Principal Contractor"), appoint or procure the appointment of the person responsible for the Construction Work as the Principal Contractor and notify the Contractor of that appointment.

11.2. If the Client fails to make or procure an appointment of a Principal Contractor as required, the Client will be deemed to have appointed itself as the Principal Contractor for that Construction Work.

12. INTELLECTUAL PROPERTY

The Client warrants to the Contractor that all materials, designs, drawings and specifications supplied to the Contractor shall not infringe any intellectual property (whether registered or unregistered) of any third party and the Client shall indemnify the Contractor and keep it indemnified against all costs, loss or damage arising from such third party claims.

13. LIABILITY AND INDEMNITY

13.1. The only conditions and warranties which are binding on the Contractor in goods and services supplied by the Contractor to the Client are those imposed and required to be binding by statute (including the *Trade Practices Act 1974* (Clth)) and to the extent permitted thereby, the liability, if any, of the Contractor arising from the breach of such conditions or warranties shall at the Contractor's option be limited to and completely discharged by either:

13.1.1. in the case of goods to any one of the following as determined by the Contractor:

- (i) the refund of the price paid by the Client for the goods or the issue of a credit note for such amount; or
- (ii) the replacement of the goods or the supply or equivalent goods; or
- (iii) the repair of the goods; or
- (iv) the payment of the cost of replacing the goods or at acquiring equivalent goods; or
- (v) the payment of the costs of having the goods repaired;

13.1.2. in the case of services to any one of the following as determined by the Contractor;

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again; or
- (iii) the lesser of \$1,000,000 or an amount equal to five (5) times the Fee,

and otherwise all other conditions and warranties in respect of the supply of the goods and services by the Contractor to the Client are hereby expressly excluded and negated.

13.2. Subject to sub-clause 13.1, if any of the goods or components of the goods are expressly warranted by a manufacturer or supplier other than the Contractor, that warranty is the warranty of the manufacturer or supplier and the Contractor shall have no liability in respect of any breach thereof. The Contractor may, in its absolute discretion, present warranty claims to the manufacturer or supplier on behalf of the Client.

13.3. Except to the extent provided in sub-clause 13.1, the Contractor shall have no liability (including liability in negligence) to any person for any loss or damage consequential or otherwise, howsoever

suffered or incurred by any such person in relation to the goods and services supplied by the Contractor to the Client, and without limiting the generality thereof, any loss or damage consequential or otherwise howsoever suffered or incurred by any such person caused by or resulting directly or indirectly from any failure, defect or deficiency of whatsoever nature or kind of or in the goods or services, or in respect of any loss or damage consequential or otherwise arising out of or in connection with the Client using or permitting the use of Contract Documents in a manner not authorised by these Terms and Conditions or where the goods are not used strictly in accordance with instructions for use (if any) provided to the Client with or on the goods.

13.4. It shall be a condition of the Contractor considering warranty claims that all goods or failed parts are returned to the Contractor for inspection at the cost of the Client.

13.5. The Client hereby indemnifies the Contractor and shall keep the Contractor indemnified (to the extent permissible by law) in respect of any loss or damage, consequential or otherwise, howsoever suffered or incurred by any person caused by or resulting directly or indirectly from:

- 13.5.1. any failure, defect or deficiency of whatsoever nature or kind of or in the goods or services;
- 13.5.2. the Client using or permitting the use of Contract Documents in a manner not authorised by these Terms and Conditions; and
- 13.5.3. the use of goods by persons otherwise than in accordance with any instructions provided by the Contractor with or on the goods.

13.6. The word 'person' referred to in sub-clause 13.5 above shall be deemed to include:

- 13.6.1. any person that has contracted with the Client and for which the Services are being procured by the Client;
- 13.6.2. an owner of any property adjacent to or in the vicinity of the site on which the Services are being performed; and
- 13.6.3. an owner of any services, including but not limited to water, gas, fuel, telephone, electricity, drainage, sewerage, railway, airport, industrial waste and electronic communications services.

14. ASSIGNMENT

The Client cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Contractor.

15. CHANGE OF ENTITY

The Client acknowledges:-

15.1. that if it changes the entity under which it trades, or if ownership or control of such entity shall change, it shall be the Client's responsibility to notify the Contractor of such change and to separately negotiate conditions of sale or credit under which the new or changed entity may commence trading with the Contractor;

15.2. that until a new trading arrangement with the new or changed entity has been negotiated and accepted by the Contractor in writing:-

- 15.2.1. the Client shall remain liable for payment to the Contractor for all Services ordered or purchased by such new or changed entity;
- 15.2.2. it shall not be open for the Client to raise as a defence in any proceeding commenced by the Contractor for the recovery of such sums owing to the Contractor

under these Terms and Conditions that the debt was incurred by a person or entity other than the Client.

16. PRINCIPAL LIABILITY

Any signatory for a proprietary company Client will be and remain personally responsible for the due performance of the Client's obligations as if the signatory was the client. If required by the Contractor, the signatory will procure the execution by all Client company directors of a guarantee to be prepared by or on behalf of the Contractor.

17. LIEN CHARGE

17.1. The Client hereby acknowledges and agrees that the Contractor has a lien over all goods in its possession belonging to the Client to secure payment of any or all amounts outstanding from time to time.

17.2. The Client hereby charges all property, both equitable and legal of the Client in respect of any monies that may hereinafter be owing to the Contractor under this Agreement by the Client, or otherwise and hereby authorise the Contractor or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Client at any time, or to register this charge over assets of the Client with the Australian Securities and Investments Commission.

18. WAIVER

The failure of the Contractor, at any time, to require strict performance by the Client of any matter shall not be deemed to be a waiver of the Contractor's rights unless it is agreed to by the Contractor in writing and the Contractor shall have the right to insist upon such performance at any time in the future.

19. SEVERANCE

If any provision of these Terms and Conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision shall so far as is possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, the provision or part of it shall be deemed to be void and severable and the remaining provisions of these Terms and Conditions shall not in any way be affected or impaired.

20. FORCE MAJEURE

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Contractor, the Contractor is unable to perform in whole or part any obligation under this Agreement, the Contractor shall be relieved of that obligation under this Agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Client in respect of such liability.

21. LAW & JURISDICTION

These Terms and Conditions shall be deemed to have been made in the State of Victoria, Australia and shall be governed by the laws of that State and the parties agree to submit to the exclusive jurisdiction of the courts of that State.