

Standard Terms of Service



1 Definitions and Interpretation

In these Standard Terms of Service:

- 1.1 **Client** means the person or company to which the Contractor's Quote is addressed.
- 1.2 **Contractor** means the AE Smith, NuvoGroup or Envar entity stated on the Quote.
- 1.3 **Extension Event** means any of the following:
 - (a) a variation directed in writing by the Client;
 - (b) any act, matter or thing which could not have been reasonably foreseen by the Contractor or was beyond the Contractor's reasonable control;
 - (c) a change in law;
 - (d) any act or omission of the Client or any contractor, consultant, representative or agent not in the control of the Contractor;
 - (e) delays of municipal, government or statutory authorities;
 - (f) latent services or conditions, including but not limited to asbestos or asbestos containing materials at the Site;
 - (g) delayed or restricted access to all or part of the Site; and
 - (h) a Force Majeure Event.
- 1.4 **Force Majeure Event** means any event not within the control of the Contractor, including:
 - (a) acts of God, including cyclone, hurricane, typhoon, flood, earthquake, tsunami, inclement weather and bushfire;
 - (b) epidemic, pandemic or quarantine by order of a government agency, including COVID-19;
 - (c) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any government agency;
 - (d) any delay or failure in the supply of plant, equipment, or materials which is caused by an event beyond the reasonable control of the Contractor;
 - (e) ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; and
 - (f) industrial action or dispute which affects the jurisdiction where the Services are performed.
- 1.5 **Goods** means the goods to be supplied by the Contractor as part of the Services as described in the Quote.
- 1.6 **Price** means the amount stated in the Quote as adjusted in accordance with the Contract.
- 1.7 **Personnel** means any officer, employee, consultant, representative, subcontractor, sub-subcontractor or agent of the Contractor or the Client.
- 1.8 **Quote** means an offer (including counteroffer), proposal, quotation, price estimate, submission or tender for the Services.
- 1.9 **Services** means the services to be provided by the Contractor as described in the Quote, including the supply of Goods.
- 1.10 **Site** means any place provided by or on behalf of the Client where the Contractor is required to perform all or part of the Services.
- 1.11 **Terms** means these Standard Terms of Service.
- 1.12 **Warranty Period** means a period of (12) months from the date of delivery of the Goods or completion of the Services.
- 1.13 Clause headings shall not form part of, and shall not be used in the interpretation of these Terms.
- 1.14 Where the day on or by which any thing is to be done under these Terms is not a business day, that thing must be done on or by the next business day.
- 1.15 Any provision of these Terms is held to be illegal, invalid, void, voidable or unenforceable, must be read down or severed to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable and the remaining provisions continue in force.
- 1.16 The words 'include' or 'for example' or similar expressions does not limit what else is included and words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- 1.17 No provision of these Terms will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Terms or that provision.
- 1.18 If there is an inconsistency between documents, these Terms will take precedence, followed by the Quote.

2 Form of Contract

- 2.1 These Terms together with any other terms and conditions described in the Quote (if any), form the basis upon which the Quote has been prepared in response to the Client's enquiry.
- 2.2 A contract is formed between the parties immediately upon the Client's written acceptance of the Contractor's Quote including these Terms, or any form of payment for the Services ('Contract').
- 2.3 The Contract, including these Terms and any attachments or exhibits, constitutes the entire agreement between the parties regarding the subject matter and supersedes all prior and contemporaneous agreements, representations, negotiations, and discussions, whether oral or written.
- 2.4 The Contract shall prevail over any conflicting terms and conditions contained in any purchase order, invoice, or other document issued by either party.

Any modifications to the Contract must be in writing and signed by both parties.

- 2.5 The Contractor may vary or withdraw the Quote at any time prior to acceptance by the Client. A Quote which is based on a budget, preliminary or estimate price is subject to variation and shall not be considered an offer capable of acceptance unless the Contractor confirms in writing.
- 2.6 Unless otherwise stated in the Quote or agreed by the Contractor in writing, the Quote shall be valid for acceptance for a period of (30) days from its date.

3 Performance of Services

- 3.1 The Contractor shall perform the Services in accordance with the requirements of the Contract and by the times required by the Contract, as may be varied in accordance with the Contract.
- 3.2 The Contractor warrants to the Client that the Services will be performed in accordance with, and will:
 - (a) comply with all applicable laws;
 - (b) comply with the scope of work as varied in accordance with the Contract;
 - (c) use all reasonable care and skill in performing the Services.
- 3.3 The Contractor's obligation in respect of the Services and any breach of warranty or duty expressed or implied in connection therewith, is solely and exclusively limited to the re-performance of the Services in which any deficiency or omission becomes apparent and is notified by the Client to the Contractor within the Warranty Period after completion of the relevant Services.
- 3.4 The Contractor warrants that any Goods which form part of the Services (other than any goods which are provided by the Client for inclusion in the Services) shall, under proper use, be free from defects in materials and workmanship and conform to the specification in the Contract. The Contractor's obligation under this warranty shall be limited to the making good by repair or replacement, at the Contractor's option, of any such Goods in which any defect appears and is notified by the Client to the Contractor before the expiry of the Warranty Period after delivery of the Goods.
- 3.5 The Contractor's obligation under this clause 3 shall not extend to any goods which are provided by the Client for inclusion in the Services or any failure caused by fair wear and tear, designs, specifications and items which are outside the Contractor's scope of supply, accidents, misuse, neglect, lack of proper use, or repairs or modifications to the Goods which have been made without the Contractor's approval.
- 3.6 The Contractor's liability and the Client's remedies in respect of Services and any loss or damage resulting therefrom, are solely and exclusively as stated in this clause 3, and the Contractor shall have no liability for any defect, omission or damage unless notified by the Client to Contractor prior to the expiry of the Warranty Period described above.
- 3.7 If, and to the extent that, the Contractor is in breach of, or a clause under these Terms is void under the Competition and Consumer Act 2010 (Cth), then the Contractor's liability for a breach of a condition or warranty is limited to, at their entire discretion:
 - (a) the supplying of the relevant Services again;
 - (b) in respect of Goods, the repair or replacement of the Goods; or
 - (c) the payment of the cost of having the Services supplied again or the cost of repairing or replacing the Goods, as relevant.

4 Client's Obligations

- 4.1 The Client:
 - (a) must pay the Contractor the Price for the Services in accordance with clause 5 of these Terms;
 - (b) is responsible for satisfying itself as to the suitability of the Goods or Services for the Client's purposes. The Contractor shall not be bound by any representation concerning the scope of supply, performance or characteristics of Services unless expressly incorporated in the Contract;
 - (c) must, promptly so as to avoid any delay to the Contractor, provide all access to Site, information, approvals, permits, authorisations, licences, customs clearances, instructions, materials, drawings, technical and survey information access and other things which may be required in relation to the performance of the obligations and which is not expressly stated by the Contract to be the Contractor's responsibility;
 - (d) must provide to the Contractor any approval or comment with respect to drawings or documents required to be submitted by the Contractor to the Client within (5) business days from the date of the submission by the Contractor of such drawings and/or documents unless some other time is provided for in the Contract. Following the resubmission of any drawing or document by the Contractor, the Client must provide any approval or comment within (2) business days. Failure by the Client to provide approval or comment within this period will be taken as approval of the relevant submission; and
 - (e) warrants the accuracy and completeness of all goods, information and documents provided to the Contractor and acknowledges and agrees that the Contractor may rely on all such things in its performance of the Services and has not independently verified the accuracy and completeness of any such things.

5 Price

- 5.1 The Price is exclusive of GST. The Client must reimburse the Contractor for the amount of any GST payable in respect of any Services performed under or in

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connection with the Contract, subject to the Contractor providing the Client with a tax invoice in respect of that supply.

5.2 Unless otherwise stated in the Contract, the Price excludes any obligation on the Contractor to provide performance securities, performance bonds or retention monies to the Client.

6 Payment

6.1 The Contractor will issue invoices for the Price to the Client on a monthly basis, or any other basis agreed by the parties and invoices shall be due and payable by the Client within thirty (30) days of the date of invoice.

6.2 If any outstanding payments remain unpaid by the Client for a period of (14) days or other such period agreed in writing by the Contractor, then the Contractor may suspend the performance of the Services until the Client pays all outstanding amounts.

7 Variations

7.1 The Client may by written notice direct the Contractor to increase, decrease, or change the nature of the Goods and/or Services.

7.2 Unless otherwise agreed by the Contractor and the Client in writing, any variation to the Services shall, to the extent applicable, be valued in accordance with Contractor's schedule of rates and otherwise valued to be a fair and reasonable amount by the Contractor.

7.3 The Contractor is not obliged to perform a variation to the Services until the value of the variation is agreed by the Client in writing.

7.4 The Contractor may propose a variation to the Client for its convenience. The Client must accept or reject the variation proposal within (5) business days from receipt of the variation proposal. Failure by the Client to provide a response within this period will be taken as approval of the variation proposal.

8 Time and Completion

8.1 Any times quoted for supply of the Services are approximate only, provided that the Contractor shall make all reasonable efforts to perform the Services within the time stated in the Contract.

8.2 If the Contractor considers that it will, or is likely to, be delayed or disrupted from its performance of the Services by an Extension Event, the Contractor will give the Client notice of the delay as soon as reasonably practicable.

8.3 The Contractor is entitled to a reasonable extension of time should an Extension Event occur, which disrupts or delays the performance of the Services from reaching the date to complete the performance of the Services by the time in the Contract (if any).

8.4 Where the Contractor has been granted an extension of time pursuant to clause 8.3, the Contractor is entitled to claim an adjustment to the Price for additional costs incurred by the Contractor arising out of or as a result of that Extension Event. If the Client fails to agree to an adjustment under this clause, the Contractor may suspend its performance of the Services until such payment is made.

8.5 The Client's sole remedy if the Contractor fails to complete the performance of the Services by the time stated in the Contract (if any) will be liquidated damages payable from the Contractor to the Client in the amount of 0.25% of the Price per week, capped in the aggregate to 5% of the Price.

9 Insurance

9.1 The Contractor will take out and maintain the following insurance policies:

- public liability insurance for an amount not less than \$5 million for each accident, claim, occurrence or event and \$10 million in the aggregate;
- products liability insurance for not less than \$10 million in the aggregate for the annual policy period;
- motor vehicle third party property damage insurance for not less than \$20 million per event; and
- workers compensation covering the Contractor for any liability under statute or at common law for the injury or death of any person employed by the Contractor who provides Services in relation to the Contract.

9.2 If requested by the Client, the Contractor shall provide confirmation of the insurances required under this clause.

10 Intellectual property and Confidentiality

10.1 All title and rights subsisting in the information and documents relating to the Services, Goods and Contractor immediately vest in, and remain the property of the Contractor (Intellectual Property Rights). The Contractor grants to the Client a non-exclusive, perpetual, irrevocable, assignable, royalty free licence to use the Intellectual Property Rights for the purpose of the Services performed at the Site.

10.2 Each party must always keep the other party's confidential information confidential and may not disclose the confidential information for any reason other than the performance of their respective obligations under these Terms, unless that Confidential Information is:

- disclosed with the prior written consent of the other party;
- disclosed as required by law;
- in the public domain other than as a result of a breach of this clause; or
- disclosed by the Contractor to its:

- Personnel for the purposes of performing the Services; or

- professional advisers, related bodies corporate and any of their professional advisers to the extent necessary to enable the Contractor and its related bodies corporate to make informed business decisions or for the Contractor's reasonable business purposes.

11 Dispute Resolution

11.1 If a dispute arises between the parties, unless otherwise agreed, representatives of the parties must meet within (5) business days of the dispute to negotiate, acting in good faith, to resolve the dispute. Each party must ensure its representative has the authority to resolve the dispute.

11.2 If the dispute is not resolved within (10) business days of the initial meeting, the parties must mutually agree to refer the dispute to mediation.

12 Termination

12.1 If a party is in breach of the Contract (Defaulting Party), the other party may give a written notice identifying the breach. Upon receipt of the notice, the Defaulting Party must show cause or remedy the breach within (10) business days.

12.2 Either party may terminate the Contract, at any time with immediate effect if the other party:

- abandons or repudiates the Contract;
- breaches any material provision of the Contract that is not capable of being remedied;
- receives a notice under clause 12.1 and does not show cause or remedy the breach within (10) business days of receiving that notice; or
- suffers an event of insolvency including the appointment of an administrator, liquidator or receiver, and termination is not stayed or otherwise restricted under the Corporations Act.

12.3 Upon termination of the Contract, the Client must pay the Contractor any amounts due and unpaid for Services performed and costs committed up to the date of termination, including reasonable demobilisation costs, and such payment is to be made within (30) days of the date of termination.

13 Indemnity and liability

13.1 Subject to clauses 13.4 and 13.5, the Contractor indemnifies the Client from and against all costs (including legal fees on a solicitor and own client basis), losses, damages, claims and liabilities incurred by or awarded against the Client, arising out of the Contractor's gross negligence, fraud or wilful misconduct.

13.2 The Client releases and indemnifies the Contractor from and against all costs (including legal fees on a solicitor and own client basis), losses, damages, claims and liabilities incurred by or awarded against the Contractor, arising out of the Client's gross negligence, fraud or wilful misconduct.

13.3 Each party's liability to indemnify the other party under or arising out of this clause, will be reduced proportionately to the extent that any act, omission or default of the indemnified party or any of its Personnel contributed to the relevant cost, loss, damage, claim or liability.

13.4 Subject always to clause 13.5 and notwithstanding any other provision of these Terms, and except to the extent that liability cannot be limited or excluded at law, the total aggregate liability of the Contractor to the Client, whether arising under or in connection with these Terms or the Contract or the performance or non-performance of, or anything incidental thereto, shall be limited in the aggregate to 100% of the Price.

13.5 Notwithstanding any other provision of these Terms or the Contract to the contrary, and to the fullest extent permitted by law, in no circumstances will the Contractor be liable to the Client for any loss or damage under or for indirect, special economic or consequential losses or damages including loss of revenue, use, production, goodwill, profit, business, data, contract or anticipated savings, financing costs or increased operating costs or other purely financial or economic or indirect or special loss or damage arising out of or as a result of the supply of the Goods, or performance of the Services under the Contract.

13.6 The Contractor is discharged from all liability in respect of the Goods, Services or otherwise in connection with these Terms whether under the law of contract, in tort, in equity, under statute or otherwise, at the expiration of (12) months from completion of the Services.

14 General Matters

14.1 The laws of the state or territory in which the Services are performed will govern the Contract. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the relevant state or territory and waives any right to claim that those courts are an inconvenient forum.

14.2 A notice, demand, consent, approval or communication under the Contract must be in writing, in English and signed by a party's representative and sent by email to the recipient party's address for notices, and is taken to be received on the time and date noted on the email, noting that any email received after 4:00pm on a business day is taken to be received on the next business day.

14.3 The rights and obligations contained in clauses 8.5, 10, 11 and 13 survive termination of the Contract.

14.4 Waiver of any provision of or right under the Contract must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.