



# AIRENG PTY LTD

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## AIRENG TERMS AND CONDITIONS FOR PURCHASE OF GOODS & SERVICES

### 1. Definitions

**"Contract"** means the agreement between AirEng and the Supplier for the supply of Services evidenced by the Purchase Order, these Terms and Conditions and all other documents which are either attached to the Purchase Order or incorporated by reference. **"Goods"** means any materials, supplies, plant, equipment and other things to be used in the performance of the Services or developed in connection with the Services. **"AirEng"** means the company designated as the purchaser of the Services on the Purchase Order. **"Liabilities"** means actions, damages, claims, demands, losses, liabilities, costs and expenses of any kind. **"Purchase Order"** means the order (including any attachments) for Services from the Supplier that has been placed by AirEng and any attached documentation. **"Supplier"** means the Supplier of the Services designated on the Purchase Order. **"Services"** means services, specified in the Purchase Order. **"Special Conditions"** means any special condition set out in the Purchase Order relating to the Services. **"Terms and Conditions"** means these Terms and Conditions for Purchase of Services.

### 2. Application

(a) These Terms and Conditions and any Special Conditions, apply to all Services supplied by the Supplier to AirEng pursuant to the Purchase Order and (any variation or amendment to a Purchase Order) or any other agreement whether in writing or otherwise, whereby the Services are to be supplied or have been supplied by the Supplier to AirEng.

The Supplier agrees that its written acceptance or commencement of work under the Purchase Order shall constitute the Seller's acceptance of these Terms and Conditions. All terms and conditions

proposed by the Supplier which are different from or in addition to these Terms and Conditions and the Purchase Order are of no binding effect on AirEng and shall not become a part of these Terms and Conditions.

(b) Any quotation or proposal provided by the Supplier and accepted by AirEng is accepted on these Terms and Conditions and any Purchase Order will be upon and subject to these Terms and Conditions.

(c) Except as may be otherwise agreed by AirEng in writing, these Terms and Conditions supersede and exclude all discussions, representations and arrangements relating to the supply of the Services or any part thereof.

(d) If there is any inconsistency or variance between these Terms and Conditions and any quotation or tender proposal in respect of the Services, these Terms and Conditions will prevail. In the event of any inconsistency in the documents comprising the Contract, the order of precedence shall be (i) the Purchase Order (and any Special Conditions) (ii) documents attached to the Purchase Order and (iii) these Terms and Conditions.

(e) In the event of one or more clauses of the Contract is held by a court of law to be legally invalid or unenforceable the remainder of the clauses shall in no way be affected.

### 3. Performance of Services

(a) The Supplier will perform the Services in accordance with the Contract in consideration of payment. Terms of payment shall be as set out in the Purchase Order.

(b) The Supplier must commence performance of the Services as soon as possible after receipt of a Purchase Order and must complete the Services in a timely manner and in any event, by no later than any specified date for completion set out in the Purchase Order or as subsequently agreed by the parties in writing.

(c) The Supplier will perform the Services at the location directed by AirEng and shall bear the costs of mobilisation to that location unless otherwise agreed by AirEng.

(d) The Supplier is an independent contractor and will not act as, or be or be regarded as, an agent or employee of AirEng.

(e) The Supplier and the Supplier's personnel will not be entitled to any benefits which would ordinarily accrue to any employee of AirEng by virtue of their status as an employee.

### 4. Warranties

(a) The Supplier warrants that:

(i) it will exercise all the skill, care and diligence that would be expected of a professional experienced in providing the Services; (ii) it will provide the services in a timely, safe and professional manner using appropriately trained and experienced personnel; (iii) any equipment the Supplier uses will:

(1) be in a safe working condition;

(2) comply with all applicable safety laws and standards; and

(3) be operated by suitably qualified and competent personnel, to the satisfaction of AirEng. (iv) in respect of any design work, under the Purchase Order, the Services when complete will be:

(1) be fit for their purpose for which they were intended or the purpose to be inferred;

(2) comply with all requirements of the Contract; and

(3) comply with good design and engineering practice.

(v) in respect of any works and Goods developed, produced or supplied in connection with the Services:

(1) the works and Goods will be fit for the purpose for which they are supplied;

(2) all usual and customary trade warranties will be obtained for the Goods as well as any warranties which AirEng may specifically request and the Supplier will at its cost ensure that AirEng is assigned and has the benefit of any unexpired warranties upon completion of the Services;

(3) it has good and marketable title to the Goods;

(4) copies of all warranties will be supplied to AirEng with invoices for payment; and

(5) if any part of the works or Goods are found by AirEng to be defective and not in compliance with the Contract, within the duration of the Contract including any defect liability period and the Supplier on the request of AirEng fails to remedy any such defect or default to the satisfaction of AirEng, such defect or default may be remedied by AirEng at the cost of the Supplier.

### 5. Suspension



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(a) AirEng may elect in its sole and absolute discretion, to suspend the Supplier's performance of the Services by providing seven (7) days advance written notice to the Supplier (**Suspension Notice**).

(b) Where a Suspension Notice is issued, the Supplier must:

(i) take any action specified in the Suspension Notice which AirEng may reasonably require;

(ii) do all things reasonably necessary to reduce and limit any expenses or costs incurred in connection with suspension of the Services; and

(iii) recommence performance of the Services as directed by AirEng.

(c) The Supplier shall be entitled to request by written notice, reimbursement of actual direct costs incurred in connection with suspension of the Services. The Supplier must submit to AirEng all documentation to substantiate any reimbursement claim made under this clause.

## 6. Default and Termination

(a) If the Supplier fails to:

(i) perform or observe any of its obligations under the Contract; or

(ii) provide with the Services with due diligence and in a competent and timely manner, AirEng may send the Supplier a notice specifying the default (**Default Notice**) and stating AirEng's intention to terminate the Contract if the Supplier fails to remedy the default. The Default Notice may not be unreasonably given and must specify that it is a notice under this clause.

(b) If after receipt of the Default Notice the Supplier fails within a reasonable time to:

(i) remedy the default to AirEng's satisfaction;

(ii) provide adequate assurance and outline remedial measures to be taken by the Supplier to remedy the default; or

(iii) implement any remedial measures proposed under (ii) within a reasonable time (in the opinion of AirEng), AirEng may (without prejudice to any other rights or remedies of AirEng under the Contract or otherwise), exercise one or both of the following powers:

(1) provide written notice with immediate effect that AirEng will wholly or partly suspend payment under the Contract until the default has been remedied (**Payment Suspension Notice**); or

(2) provide written notice with immediate effect that the Contract is terminated (**Termination Notice**).

(c) In addition to its other rights, AirEng may at any time and in its sole and absolute discretion by providing written notice, terminate the contract in whole or in part with immediate effect (or upon such notice period that AirEng considers appropriate) and in such case, AirEng shall pay the Supplier for the value of work performed up to the date of termination and actual costs incurred on account by the Supplier for services to be performed in the future. The Supplier must submit to AirEng all documentation to substantiate any reimbursement claim made under this clause. For the avoidance of doubt, the Supplier is not entitled to claim any indirect and consequential costs, or amounts for loss of or foregone profit.

(d) The Supplier must on receipt of the Termination Notice (whether under clause 6 (b) or 6(c):

(i) do all things possible to reduce any cost or expense consequent on the termination;

(ii) do only that work as is specified in the Termination Notice;

(iii) comply in all respects with any directions contained in the Termination Notice;

(iv) take any other action relating to the termination of the Contract which AirEng may reasonably require including without limitation, reporting on the status of works in progress and providing documentation in support thereof; and (v) return all property of AirEng or other parties which has been provided to the Supplier to enable performance of the Services; (e) Except as provided in this clause, AirEng shall not be liable to the Supplier for claims by the Supplier's or the Supplier's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest, development costs, facilities or equipment costs or administrative costs from termination of the Contract.

(f) AirEng or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim by the Seller.

## 7. Co-Operation With Other Contractors and Suppliers

(a) The Supplier must co-operate with and not impede other contractors and suppliers (whether employed or engaged by AirEng or not) and give them any information or data reasonably necessary to ensure proper and timely performance of their respective work.

(b) The Supplier is not entitled to any claim payment increase, damages, costs or any other financial or other compensation as a result of any interference from other contractors and suppliers (whether employed or engaged by AirEng not).

## 8. Variations

(a) AirEng may by written notice direct the Supplier alter, amend, omit, add to or otherwise vary any aspect of the Services (**Variation Notice**). The Supplier will comply with the notice and be bound by the same conditions as though the contents of the notice and any variation thereby made were included in the Contract.

(b) The difference in cost, if any, occasioned by variations directed by AirEng will be added to or deducted from the contract price, as the case may require.

(c) As soon as reasonably practicable following receipt of a Variation Notice, the Supplier must provide AirEng with a quote estimating the cost of the variation (**Variation Quote**). In so far as they are applicable, the rates (or price breakdown if no relevant rates exist) contained in the Purchase Order will be used by the Supplier to calculate the cost of a variation but otherwise the cost of a variation must be estimated by the Supplier at the lowest reasonable cost consistent with sound work practices.

(d) As soon as reasonably practicable following receipt of a Variation Quote, AirEng must confirm in writing whether or not it accepts the Variation Quote and set out any qualifications to or conditions of its acceptance.

(e) Commencement of any work in connection with a variation before AirEng responds in writing to the Variation Quote is at the Suppliers risk.

(f) The Supplier shall not vary the supply or specification of any goods without the written consent of AirEng.



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## 9. Goods and Services Tax

- (a) For the purpose of this clause 9:(i) "GST" means GST within the meaning of the GST Act.
- (ii) "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).
- (iii) Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.
- (b) To the extent that a party makes a taxable supply in connection with the Contract, except where provision is made to the contrary, and subject to this clause 7(b), the consideration payable by a party under the Contract represents the value of the taxable supply for which payment is to be made.
- (c) Subject to the following clause, if a party makes a taxable supply in connection with the Contract a consideration which, under the above clause, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- (d) A party's right to payment under the above clause is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

## 10. Indemnity

- (i) The Supplier will indemnify and keep indemnified, AirEng (and each of its directors, personnel, employees and officers) against all Liabilities caused, whether wholly or in part, directly or indirectly by the Supplier's (or its employee, agents, contractors or personnel) performance of the Services or as a result of any other act or conduct of the Supplier (or its employee, agents, contractors or personnel) including death or injury of any person, damage to property and business interruption of AirEng or a third party or loss resulting from AirEng's reliance on the performance of the Services except to the extent that the Liabilities incurred or suffered are a direct result of AirEng's negligence.
- (a) The Supplier shall indemnify AirEng against all Liabilities of any kind that AirEng may sustain or incur as a result of any claim or proceeding for infringement of intellectual property brought in relation to the Services and the Supplier shall unless AirEng elects otherwise, defend at its own cost, any claim that the Services infringe the intellectual property rights of any person or any proceedings arising from such a claim.

## 11. Insurance

- (a) The Supplier shall maintain adequate insurance including, without limitation, public liability, worker's compensation (including common law liability), professional indemnity, automotive and other means of transportation/freight liability insurance and product damage insurance upon such terms and for such amounts as are reasonable in the circumstances of the Contract.

## 12. Confidentiality

- (a) Each party undertakes to treat as confidential and keep secret all information relating to the technical, operational, procedural, financial information of the other party (including any information relating to a party's client's) which is disclosed directly, indirectly or by observation (**Confidential Information**). Any disclosure of confidential information to a third party may only be made with the prior consent in writing of the other party

and on such terms and conditions as that discloser of the information reasonably requires.

- (b) A party must:
- (i) keep confidential;
  - (ii) take reasonable steps to ensure that the employees, officers, agents or servants of that party do not disclose to a third party;
  - (iii) maintain proper and secure custody of; and
  - (iv) not use or reproduce in any form; any Confidential Information without the written consent of the other party or as required by law.
- (c) Each party agrees, if requested by the other party, to procure the execution of an agreement with the other party containing the same terms and conditions as this clause by any of its staff or subcontractors or consultants engaged in any capacity who may have access to the Confidential Information.
- (d) This clause shall be subordinate in operation to the terms of any independent confidentiality agreement entered into by the parties in connection with the subject matter of the Contract.

## 13. Ownership of Intellectual Property

- (a) Any drawings, documents, samples, models, patterns, tools, specifications, or process information supplied (in any format) by AirEng or its client to the Supplier or otherwise obtained by the Supplier in connection with the Contract (**Intellectual Property**) shall remain the property of AirEng (or its client as the case may be) and any information derived there from or otherwise communicated to the Supplier in connection with the Contract shall be kept confidential and shall not without the written consent of AirEng be published or disclosed to any third party or made use of by the Supplier except for the purpose of providing the Services in accordance with the Contract.
- (b) Any drawings, documents, samples, models, patterns, tools, specifications, or process information supplied (in any format) by AirEng to the Supplier (including all copies) must be returned to AirEng on request by AirEng.
- (c) Any invention, improvement, modification, development or addition to Intellectual Property created or made by the Supplier incorporating or attributable in whole or in part to the Intellectual Property of AirEng shall be the property of AirEng (or its client as the case may be). The Supplier shall execute such reasonable documentation as AirEng may require to perfect its ownership of such material.

## 14. Force Majeure

- (a) Any delay or failure of either party to perform its obligations shall be excused if, and to the extent that, it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence including, without limitation, act of God, act by any government authority, fire, flood, storm, explosion, riot, natural disaster, war, terrorism, sabotage, labour disputes (including lockouts, strikes and slowdowns) or court order provided that written notice of such delay shall be given by the affected party to the other party within 10 days. During the period of such delay or failure to perform by the Supplier, AirEng may at its option purchase Services from other sources without



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liability to the Supplier. If the delay lasts more than 30 days then AirEng may immediately terminate the Contract without liability.

## 15. Assignment and Sub-Contracting

(a) The Supplier will notify AirEng in writing of all proposed sub-contractors together with details of the work to be performed prior to the sub-contractors commencing work.

(b) The Supplier may not assign or sub-let the Contract or any part thereof except with the prior written consent of AirEng. AirEng may in its absolute discretion refuse to consent to the assignment or approve the subcontractor without giving reasons therefore and may give that consent or approval on whatever terms and conditions AirEng considers appropriate.

(c) No sub-contract or assignment (whether with or without the consent of AirEng will in any way relieve the Supplier from full responsibility for the Services and the performance of the Contract or its obligations or liabilities under the Contract.

(d) As between the Supplier and AirEng, the Supplier's sub-contractor will be considered the agent and employee of the Supplier. The acts and omissions of each sub-contractor and of all persons either directly or indirectly acting for it will be deemed to be the acts and omissions of the Supplier.

## 16. Applicable Law

(a) The Contract shall be governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria and any courts that may hear appeals from those courts in respect of any proceedings arising out of or in connection with the Contract.

## 17. Privacy

(a) Each party must comply with:

(i) the Privacy Act (Cth); and  
(ii) any reasonable directions of the other party in relation to the handling of personal information held by that party, including without limitation, the other party's privacy policy.

(b) For the purposes of this clause "personal information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

## 18. General

(a) The parties agree that AirEng may vary these Terms and Conditions from time to time and to be effective any such variation to these Terms and Conditions must be in writing and signed by an authorised representative of AirEng.