

## 1 Terms and Conditions

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This Agreement governs the provision of Services by Aestec to the Client.

## 2 Definitions

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In these Terms and Conditions:

**Aestec** means Aestec Pty Ltd (ABN: 14 115 507 885).

**Aestec Staff** means any Aestec internal staff member.

**Agreement** means the agreement between Aestec and the Client for the supply of Services as set out in these Terms and Conditions.

**Business Day** means a day other than a Saturday, Sunday or official holiday in the Queensland, Australia.

**Conditions** means these terms and conditions and where applicable includes the terms of any Invoice, Proposal or Purchase Order and includes the whole of this document as amended, supplemented or varied by Aestec from time to time, provided that the terms of this document shall prevail in the event of any inconsistency between such terms.

**Client** means the Party named in the Proposal or Purchase Order or any other Party who has ordered Services from Aestec or to whom Aestec has supplied Services, and includes any of that Party's authorised persons, successors and assigns.

**Confidential Information** means any or all information, data, documents, records, accounts, invoices and all other things whatever whether reduced to writing or not, and in whatever form, including electronic form, relating to or in any way connected with or touching or concerning this Agreement, Aestec, any Contract Personnel or any act matter or thing done or to be done for or under it or any of them.

**Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under an indemnity, contract, tort (including negligence), statute or otherwise.

**Contract Personnel** means contractors provided to the Client on a contract hire basis by Aestec as part of the Services.

**Defect** means any aspect of the Goods and/or the Services not in accordance with this Contract, or which is damaged, faulty, or incomplete in workmanship or quality and **Defective** has an equivalent meaning.

**Fees** means all fees payable by the Client to Aestec for the provision of the Services.

**Force Majeure Event** means an act of God, strike, lockout or other industrial disturbance, accident, act of the public enemy, war (declared or undeclared), terrorism, pandemic or epidemic, blockade, revolution, public riot, flood, earthquake, explosion, governmental restraint or action, industrial action, inclement weather which prevents access to, or work at the Site, embargoes or restrictions, delays in transportation and also includes the consequential effect of any of the events or things detailed above, or events otherwise beyond the reasonable control of Aestec.

**Goods** means any materials, consumables or parts that are provided by Aestec as incidental to the performance of the Services including as may be specified in Proposal or any related Purchase Order.

**Invoice** means a tax invoice for Services provided to the Client by Aestec.

**Insolvency Event** means, for a Party, as applicable, being placed, or applying, or resolving to apply, to be placed in liquidation or provisional liquidation, bankruptcy or under administration, having a controller or analogous person appointed to the Party or any of the Party's property, being unable to pay the Party's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Party's own affairs for any reason, taking any step that could result in the Party becoming an insolvent under administration, entering into a compromise or arrangement with, or assignment with, or assignment for the benefit of, any of the Party's members or creditors, or any analogous or similar events.

**Purchase Order** means a formal order placed by the Client for Services on the terms set out in the Proposal.

**Party or Parties** mean respectively a party or parties to this Agreement.

**Proposal** means a written proposal, estimate, schedule of rates, budget estimate or quotation for Services provided by Aestec to the Client.

**Services** means services to be performed by Aestec for the Client in accordance with this Agreement and shall be inclusive of supply of Goods, plant hire, transportation and any other element of supply or performance which is necessary in the undertaking of the services.

**State** means the state of Queensland, Australia.

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### **3 Offer and Agreement**

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- 3.1 All offers made by Aestec are subject to this Agreement, unless expressly agreed otherwise in writing and are open for acceptance for a period of thirty (30) days from the date of offer/tender submission. The issuance of Purchase Order by the Client to Aestec for the supply of Goods and/or Services shall, in absence of any written reservations, be deemed acceptance of Aestec's offer.
- 3.2 This Agreement shall apply to all Goods and/or Services supplied by Aestec. The Agreement between the Parties and all other documents agreed upon in writing by the Parties (including, without limitation, any schedules, specifications, annexures and drawings) will be incorporated into this Agreement.
- 3.3 The Parties agree that any reference to the Client's terms and conditions on the Purchase Order, or any form of document, shall not import those terms into the Agreement, unless otherwise expressly agreed in writing and signed by an authorised representative of Aestec. Where additional terms or conditions do apply, this Agreement shall prevail in case of any inconsistency.

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### **4 Aestec's Warranties**

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- 4.1 Aestec will ensure that Goods and/or Services supplied by it:
- (a) comply with the Client's specifications under the Agreement and all required statutory requirements and Australian Standards;
  - (b) are supplied with a manufacturer's warranty to the extent that the manufacturer offers such a warranty in respect of the Goods.
- 4.2 All other express or implied warranties that may be applicable by operation of law are excluded to the fullest extent permitted by law.

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### **5 Warranty Period**

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- 5.1 The defect liability period (DLP) of the Goods and/or Services will commence from the delivery date and shall continue for a period of three (3) months from delivery, unless expressly agreed otherwise in writing on the letter of offer/tender submission. Any additional warranty provided by a manufacturer of product incorporated into the Goods and/or Services which Aestec has supplied will be assigned to the Client on agreement with the manufacturer (if applicable).
- 5.2 During the DLP, Aestec will rectify or replace (as the case may be) defective Goods and/or Services, excluding:
- (a) any interfacing between the Client's equipment, Site, plant or design (unless expressly included as part of the Services under the Agreement);
  - (b) ordinary wear and tear; and
  - (c) any damage which has been caused or contributed to by the Client's negligence or acts or omissions.
- 5.3 If the Client finds a Defect with the Goods and/or Services, the Client must notify Aestec in writing of the Defect within seven (7) days of discovery of the Defect and must take all reasonable actions to prevent further damage.
- 5.4 Aestec will be responsible for the costs of actual rectification and/or replacement works only, and any other associated costs (including removal, travel or transportation costs) shall be borne by the Client.
- 5.5 If Aestec uses a subcontractor or supplier or other person to perform any work under the Agreement, any work, labour and services carried out by such other person shall only be warranted by Aestec to the degree that the other person indemnifies Aestec.

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### **6 Delivery**

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- 6.1 Aestec is authorised to deliver the Goods to the address nominated by the Client for that purpose and it is expressly agreed that Aestec shall be conclusively taken to have delivered the Goods in accordance with

this Agreement if at that address it obtains from any person a receipt or signed delivery docket for the Goods.

- 6.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by Aestec, it may at its option deposit the Goods at that place (which shall be conclusively taken to be due delivered) or store the Goods. If the Goods are stored by Aestec, the Client shall pay or indemnify the Aestec for all costs and expenses incurred in or about such storage. Aestec shall be entitled to redeliver the Goods to the Client from the place of storage, which shall be done at the Client's expense.
- 6.3 The Client shall reimburse Aestec all reasonable costs, including but not limited to overheads incurred by Aestec for any delays except for delays caused by Aestec itself.

## **7 Force Majeure**

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- 7.1 If performance by Aestec of any obligation under the Agreement is prevented, restricted or delayed by Force Majeure, then Aestec shall be excused from, and shall not be liable for, failure in performance to the extent of that prevention, restriction or delay, and the time for performance shall be extended accordingly as agreed by the parties.
- 7.2 If the supply of Goods and/or Services is delayed for more than sixty (60) days due to Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either Party may after that period and while the cause of non-performance still exists terminate the Agreement by not less than ten (10) Business Days' notice in writing to the other Party.

## **8 Variation**

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Either Party may propose changes to the Goods and/or Services, however no proposed changes shall come into effect until a variation has been signed by both Parties.

## **9 Sub-contracting**

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Aestec may in its sole discretion subcontract all or any of the works to be performed in connection with the delivery or provision of the Services.

## **10 Payment**

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- 10.1 Invoices shall be issued to the Client on a monthly basis and shall be paid, without any deduction or set-off of any kind, within 30 days of the Invoice date by direct transfer or any other means as agreed between the Parties.
- 10.2 In the event the Client disputes any part of an Invoice, it shall notify Aestec within 7 days after receipt. Where an Invoice is disputed, payment of those parts of the Invoice which are not in dispute shall be made within 30 days of the Invoice date.
- 10.3 If payment of an undisputed part of an Invoice is not made within the period prescribed above, Aestec reserves the right to charge interest on the unpaid amount at the rate of 1.5% per month, calculated daily for the period ending on the day the Invoice is actually paid.

## **11 Title and Risk**

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- 11.1 The Goods shall be at the Client's sole risk immediately on delivery into the care, custody or control of the Client or its agent, carrier or contractor.
- 11.2 Property and title in the goods will not pass to the Client until such time as the goods supplied by Aestec to the Client have been paid for in full.

## **12 Intellectual Property**

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- 12.1 Aestec retains all intellectual property and ownership rights of such in any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and Confidential Information, and other information relating to the Goods which is created or modified by Aestec during the Agreement.

- 12.2 Aestec grants to the Client a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all intellectual property which is used or developed by Aestec, for the purpose of, or in connection with, the Goods and/or Services supplied under the Agreement.
- 12.3 The Client acknowledges that Aestec will not be responsible for any infringement of any intellectual property of the Client that the Client has in any components, material or documents, and Aestec will not be liable for any claim whatsoever due to Aestec's use of the Client's intellectual property.
- 12.4 The Client shall indemnify and hold harmless Aestec against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Client to Aestec.

### **13 Personal Property Securities Act 2009**

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- 13.1 For the purposes of this clause, the defined terms used in this clause have the meaning given in the PPSA unless the context indicates otherwise.
- 13.2 Title to any Products delivered to the Client will not pass to the Client until the Client has paid all amounts that it owes to the Aestec in full (including the purchase price for the Products).
- 13.3 Aestec only consents to the Client selling or otherwise disposing of the Products in the ordinary course of the Client's ordinary business to bona fide customers and unrelated third parties on arm's length terms, while no default is subsisting.
- 13.4 The Client must keep the Products separately stored and marked as the property of Aestec.
- 13.5 The Client must not do any of the following in relation to any of the Products except where expressly permitted by this Agreement:
- (a) create or allow any interest in, or dispose or part with possession of, the Products;
  - (b) allow the Products to be taken outside Australia;
  - (c) allow the Products to become an accession to or commingled with any other property; or
  - (d) grant any security interest in respect of accounts owed to it in relation to the Products, without the Aestec's prior written consent.

### **14 Liability**

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- 14.1 Nothing in this agreement limits or excludes the Aestec's liability: for death or personal injury caused by its negligence or wilful misconduct or that of its employees; for fraud or fraudulent misrepresentation by it or its employees; or where liability cannot be limited or excluded by all applicable laws, statutes or regulations from time to time in force.
- 14.2 Subject to clause 14.1 above, Aestec excludes any liability to the Client, whether in contract, tort (including negligence) or otherwise, for any special, indirect or Consequential Loss
- 14.3 Subject to clause 14.1, Aestec's aggregate liability in respect of claims arising out of or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, will in no circumstances exceed the value of the total Fees payable by the Client to the Aestec under this Agreement in that calendar year.

### **15 Termination**

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- 15.1 This Agreement and a Purchase Order may be terminated by either Party in writing and without further liability as per the notice period specified in the Proposal and if no notice period is stated a minimum of 30 days written notice is required.
- 15.2 Aestec is entitled to immediately terminate this Agreement by written notice to the Client where:
- (a) The Client suffers an Insolvency Event; or

- (b) The Client, following a written notice of default allowing a reasonable period of at least ten (10) days in which the breach can be remedied, has failed to remedy the breach within that period and remains in default of its obligations under this Agreement; or
  - (c) A Force Majeure Event prevents Aestec from providing the Services for a period exceeding 30 days.
- 15.3 In the event of termination, the Client shall pay Aestec for the Services for the period up to and including the termination date and the Client will also be liable for any other reasonable costs incurred by Aestec resulting from the termination.

## **16 Confidentiality**

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- 16.1 The Client must maintain the confidentiality of, and not disclose, any trade secret, Confidential Information or commercially sensitive information about Contract Personnel or Aestec obtained while providing services to the Client, other than when required by law or when the information falls into the public domain.

## **17 General**

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- 17.1 This contract is governed by the laws of Queensland and the parties must submit to the non-exclusive jurisdiction of those Courts.
- 17.2 This Agreement and any Purchase Order may only be amended in writing signed by the Parties.
- 17.3 The Client must not assign any or all of its rights and obligations under this Agreement without the prior written agreement of Aestec.
- 17.4 To the extent permitted by law, this Agreement embodies the entire understanding of the Parties and constitutes the entire terms agreed upon between the Parties and supersedes any prior agreement (whether or not in writing) between the Parties, in relation to the subject matter of this Agreement.
- 17.5 This Agreement shall prevail over any standard terms and conditions of the Client and any other oral or written instructions of the Client.
- 17.6 To the extent of any inconsistency, the terms and conditions contained in this Agreement prevail.
- 17.7 The Client confirms that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 17.8 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- 17.9 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- 17.10 A notice or other communication connected with this Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this Agreement or sent by email to the email address of the addressee.