

INDUSTRIAL CONTROL TECHNOLOGY PTY LTD
A.C.N. 007 237 167

**TERMS AND CONDITIONS OF APPOINTMENT FOR PROVISION
OF CONSULTING ENGINEERING SERVICES**

1. Industrial Control Technology Pty Ltd A.C.N. 007 237 167 ("ICT") shall perform the consulting engineering services as referred to in these terms and conditions for the client whose name and address is specified in the proposal or other documentation accompanying these terms and conditions ("the client").
2.
 - 2.1 The consulting engineering services to be provided by ICT to the client ("the services") shall be those services described in the proposal or other documentation accompanying these terms and conditions ("the services").
 - 2.2 If the client so requests in writing, ICT may provide such services in addition to the services as may be agreed, for which ICT may make an additional charge.
 - 2.3 If the client requests any variation in the provision of the services including as to the circumstances in which the services would normally be performed, the timing or order of the provision of the services, the scope of the services or any variation in the services to be supplied or delivered, ICT may make an additional charge.
3.
 - 3.1 These terms and conditions will commence on the commencement date specified in the schedule.
 - 3.2 These terms and conditions will terminate upon the completion of the services or when otherwise terminated in accordance with these terms and conditions, whichever is the earlier.
4.
 - 4.1.1 The client shall pay ICT the fees and expenses for the services as specified in the schedule ("fees").
 - 4.1.2 ICT shall submit to the client at the end of each calendar month an invoice for that portion of the services rendered in the relevant calendar month.
 - 4.2 In the event that no fees and expenses are specified in the schedule, ICT shall submit to the client at the end of each calendar month an invoice for that portion of the services rendered in the relevant month and expenses incurred being all expenses reasonably and properly incurred in the performance of the services.
 - 4.3 The client shall pay the fees and expenses within fourteen days after the date of ICT's invoice.
 - 4.4 If the client fails to make payment of the amount due to ICT as and when due, the client shall pay, in addition to the arrears, interest on all arrears during each day during which the default continues at the rate charged by the bankers of ICT on business overdraft accounts, or such other rate as may be agreed upon between the parties.
5. ICT shall exercise reasonable skill care and diligence in the performance of the services and without limiting the generality thereof shall:
 - 5.1 use all reasonable efforts to inform itself of the client's requirements;
 - 5.2 consult as is necessary with the client in relation to the performance of the services;
 - 5.3 keep the client informed of all material matters relating to the provision of the services;
 - 5.4 notify the client of any matter that will change, or has changed the scope of or the timing for delivery of the services and in relation thereto notify the client of all fees and expenses arising from such changes;
 - 5.5 use its best endeavours to perform the services within the time (if any) specified in the schedule.
6. The client shall:
 - 6.1 provide ICT in a timely manner, all necessary information, documents, other particulars and make the necessary arrangements for access, approvals and permits, equipment and facilities as are necessary for the provision of the services ("the client obligations");
 - 6.2 appoint a person to act as its representative and give written notice to ICT of the name of the person so appointed who shall have authority to act on behalf of and bind the client for all purposes in connection with the provision of the services;
 - 6.3 if ICT advises the client that the client's obligations are not sufficient to enable ICT to provide the services, provide ICT with such further assistance, information, documents or other particulars and material as are necessary to enable the services to be provided;
 - 6.4 where the services are to be performed other than at the premises of ICT, ensure the provision of a safe working environment in accordance with the Occupational Health and Safety Act 1990 and in particular clauses 21(3)(a) and (b) thereof and further the client shall indemnify and keep indemnified ICT in respect of all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or in relation to occupational health and safety issues.
7.
 - 7.1 ICT shall not be liable for any delay in the provision of the services or failure to perform the services if such delay or failure is due to acts, omissions or circumstances over which ICT could not reasonably have exercised control, including any delay caused by the client in responding to ICT's request for information, documents or particulars pursuant to clause 6.3 hereof.
 - 7.2 The client shall pay ICT all fees and expenses incurred by it as a result of any delay or failure to perform the services due to acts, omissions or circumstances over which ICT could not reasonably have exercised control as referred to in paragraph 7.1 hereof.
 - 7.3 The client shall indemnify and keep indemnified ICT from and against all actions, suits, causes of actions, claims, demands and costs of whatsoever nature and howsoever arising from or relating to any delay in the provision of the services or failure to perform the services arising from any act omission or circumstances over which ICT could not reasonably have exercised control as referred to in paragraph 7.1 hereof including any claim for consequential loss.
8. The client agrees that any programs, flow charts, drawings, artwork, specifications, calculations, circuit diagrams, designs, components, documentation, words, items, materials or information of whatsoever nature produced or developed by ICT or under ICT's direction pursuant to or in the course of providing the services shall remain the sole and complete property of ICT, whether such property is tangible or is in the nature of industrial and intellectual property rights (including copyright and rights of confidential information) all of which property is for the purposes of these terms and conditions, any schedule or addendum thereto called "the protected material".
9. Should the services include giving to the client an estimate of the likely cost of the works or project of which the services form part, ICT warrants that it will exercise reasonable skill, care and diligence in the preparation of the estimate.

10.
 - 10.1 Where ICT is required to provide the services in conjunction with, as part of, in respect of, on the basis of or in addition or supplementary to work carried out by the client or by other persons or parties on behalf of the client including without limiting the generality thereof design, documentation, resources, validation, project management and/or resource co-ordination ("the client's works"), whether or not the client's works are subject to review by ICT, ICT shall not be liable to the client in respect of the accuracy, correctness or suitability of the client's works, and the client shall indemnify and keep indemnified ICT from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the client's works including claims for consequential loss and shall reimburse ICT for all fees and expenses incurred as a result of or arising from or, relating to any delay or failure to perform the clients works, including fees and expenses incurred in rectifying, remedying or making good the client's works.
 - 10.2 Where the services provided by the consulting engineer comprise the provision of personnel who will work either in whole or in part at premises owned or occupied by the client or a subcontractor of the client or who is subject to direction either complete or partial by the client or a subcontractor of the client as to the performance of his duties, the client shall indemnify and keep indemnified ICT from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to actions of such personnel including claims for consequential loss.
11.
 - 11.1 Except as expressly provided to the contrary in these terms and conditions, all terms, conditions warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the services or to these terms and conditions are excluded. Without limiting the generality thereof, ICT shall not be under any liability to the client in respect of any loss or damage, (including consequential loss or damage) howsoever caused which may be suffered or incurred or which may arise directly or indirectly in respect of the failure or omission on the part of ICT to comply with its obligations under these terms and conditions.
 - 11.2 Where any Act of Parliament implies in these terms and conditions, any term, condition or warranty that the Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in these terms and conditions. However, the liability of ICT for any breach of such term, condition or warranty shall be limited, at the option of ICT to:
 - 11.2.1 the supplying of the services again; or
 - 11.2.2 the payment of the cost of having the services supplied again; or
 - 11.2.3 five hundred thousand dollars (\$500,000.00).
 - 11.3 Where ICT fails to exercise a reasonable degree of skill, care and diligence in the provision of the services, the liability of ICT shall be limited, at the option of ICT to:
 - 11.3.1 the supplying of the services again; or
 - 11.3.2 the payment of the cost of having the services supplied again; or
 - 11.3.3 five hundred thousand dollars (\$500,000.00).
 - 11.4 Notwithstanding the foregoing, ICT shall have no liability to the client arising from or relating to the provision of the services, unless the client has given notice in writing within six months of the date of termination of this agreement.
 - 11.5 The client shall indemnify and keep indemnified ICT, its directors, employees, servants and agents from all actions, suits, causes of actions, claims demands and costs of whatever nature and howsoever arising from or relating to the provision of the services or in respect of any failure or omission on the part of ICT to comply with its obligation save as provided herein.
12.
 - 12.1 ICT may sub-contract for the performance of the services or any part of the services.
 - 12.2 Save as provided in clause 12.1, the benefit of these terms and conditions shall not be dealt with in any way by either party (whether by assignment, sub-licensing or otherwise) without the other party's prior written consent.
13.
 - 13.1 Without limiting the generality of any other clause in these terms and conditions, a party may terminate these terms and conditions immediately by notice in writing if:
 - 13.1.1 any payment due pursuant to these terms and conditions remains unpaid for a period of 14 days;
 - 13.1.2 a party is in breach of any clause of these terms and conditions and such breach is not remedied within 28 days after service of a written notice specifying the breach;
 - 13.1.3 the party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - 13.1.4 a party ceases or threatens to cease conducting its business in the normal manner.
 - 13.2 If the services are terminated ICT may:
 - 13.2.1 retain any monies paid to it;
 - 13.2.2 charge for services performed in respect of which no fee has previously been charged;
 - 13.2.3 retake possession of all property of ICT in the possession of the client;
 - 13.2.4 be regarded as discharged from any further obligations to provide services; and
 - 13.2.5 pursue any additional or alternative remedies provided by law.
14. Where any provision of these terms and conditions is inconsistent or in conflict with the provisions of the schedule and any other document constituting an agreement between the client and ICT the relevant provision of these terms and conditions shall prevail.
15. ICT has taken out and maintains the following insurances:
 - 15.1 Worker's Compensation (Work Cover);
 - 15.2 Motor Vehicle;
 - 15.3 Public Liability;applicable to its personnel, motor vehicles and the performance of the services.
16. Any dispute arising in connection with the provision of the services shall be submitted to arbitration in accordance with the rules for the conduct of commercial arbitration for the time being of the Institute of Arbitrators, Australia, with the arbitrator to be appointed by the President for the time being of the Institution of Engineers, Australia.
17. If there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a state or territory of Australia or any statutory authority that directly or indirectly increases or decreases the costs or reimbursable expenses incurred by ICT in performing the services, the payment otherwise due to ICT shall be increased or decreased accordingly.
18. These terms and conditions shall be governed by the laws of the State of Victoria and the parties hereby agree to submit to the jurisdiction of the Courts in the State of Victoria in relation to any question or dispute that may arise hereunder.

19. Any demand notice or document under these terms and conditions may be made or given by a party or by the solicitor for a party and shall be sufficiently served or delivered if served or delivered personally or posted by prepaid post addressed to the party to be served at its address specified or notified pursuant to these terms and conditions and where no such address is specified or notified at its registered office.
20. These terms and conditions constitute the sole and entire agreement between the parties and no warranties representations guarantees or other terms or conditions of whatsoever nature not contained and recorded herein shall be of any force or effect.
21. If any provision of these terms and conditions shall be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with those terms.
22.
 - 22.1 No change termination or attempted waiver of any of the provisions of these terms and conditions shall be binding on a party hereto unless in writing and signed by a duly authorised officer of that party or by that party.
 - 22.2 No waiver by any party or any default in the strict and literal performance of or compliance with any provision, condition or requirement herein shall be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement in the future nor shall any delay or omission by any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.
23.
 - 23.1 In these terms and conditions except to the extent that the context otherwise requires:
 - 23.1.1 words denoting the singular include the plural and vice versa;
 - 23.1.2 words denoting individuals or persons include body corporates and trusts and vice versa;
 - 23.1.3 reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of these terms and conditions;
 - 23.1.4 reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time;
 - 23.1.5 words denoting any gender includes all genders;
 - 23.1.6 where a word or phrase is given a definite meaning in these terms and conditions a part of speech or other grammatical form for that word or phrase has a corresponding meaning; and
 - 23.1.7 where the client consists of more than one person then any obligation, term or condition shall bind each person jointly and severally.
24. These terms and conditions shall extend to bind the parties hereto and their respective heirs, executors, successors, assigns, administrators and legal personal representatives and any reference to any party shall where the context so admit include their respective heirs, executors, successors, assigns, administrators and legal personal representatives.
25. The client shall not employ or offer to employ any of ICT's staff or engage any of ICT's staff directly or through any third party in the services of itself or any subsidiary, affiliate, related corporation (as defined by the Corporations Law) or associated person during the term or for a period of six (6) months after completion of the services.
26. Any special conditions included in the addendum shall form and be part of these terms and conditions.
27. The placing of an order by the client includes acceptance of these terms and conditions as the sole basis for the supply of the services to the exclusion of any conditions appearing on any other document and any modification of these conditions expressed in any documentation of the client shall not apply to these terms and conditions unless expressly accepted in writing by ICT.
28.
 - 28.1 For the purpose of this clause 28:

"GST" means GST within the meaning of the GST Act.
"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).
Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.
 - 28.2 To the extent that a party makes a *taxable supply* in connection with these terms and conditions, except where express provision is made to the contrary in any documentation, and subject to this clause 28.2, the *consideration* payable by a party under this agreement represents the *value* of the *taxable supply* for which payment is to be made.
 - 28.3 Subject to clause 28.4, if a party makes a *taxable supply* in connection with this agreement for a *consideration* which, under clause 28.2, 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*.
 - 28.4 A party's right to payment under clause 28.3 is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.