

TERMS AND CONDITIONS OF ENGAGEMENT

1. Definitions
 - 1.1 "Agreement" means agreement between Milward Engineering Management Pty Ltd (MEM) and the Client for the supply of Services evidenced by a Purchase Order, these Terms and Conditions and all other documents which are either attached to the Purchase Order or incorporated by reference or written approval to commence Services or otherwise acceptance of proposal received from MEM;
 - 1.2 "Client" means the person or body named as the client evidenced by a Purchase Order, these Terms and Conditions and all other documents which are either attached to the Purchase Order or incorporated by reference or written engagement and acceptance of proposal received from MEM;
 - 1.3 "Intellectual Property" means all copyright and neighboring rights, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered designs, confidential information (including trade secrets & know how) and layouts and all rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
 - 1.4 "Project" means the job described in the Purchase Order or incorporated by reference or written engagement and acceptance of proposal received from MEM;
 - 1.5 "Quote" means a quote, estimate or proposal of projection of costs in relation to works or a project (whether written or oral);
 - 1.6 "Scope of Works" means the scope of works provided by the Client brief or by MEM;
 - 1.7 "Services" means all services to be provided in the Scope of Works consulting services together with such other services as may be agreed from time to time.
 - 1.8 Agreement shall be governed by the laws of the State of Victoria, Aust.
2. MEM shall:
 - 2.1 Perform the Services with the degree of skill, care and diligence normally exercised by members of the engineering profession engaged in the provision of similar services at the time of engagement;
 - 2.2 Provide the Services in accordance with all reasonable directions of the Client;
 - 2.3 Produce reports and/or other material under agreement for the sole use of the Client MEM undertakes no duty to nor accepts any responsibility for any other party;
 - 2.4 Issue tax invoices at monthly intervals or interim periods with 14-day payment terms.;
 - 2.5 Provide details of invoice charges and expenses if required by the Client;
 - 2.6 Maintain current Workers Compensation, Public Liability and Professional Indemnity insurances.
3. Fee Conditions
 - 3.1 The Client will pay the fee accounts rendered by MEM at intervals as set out in these Terms and Conditions. The Client will pay the fee accounts promptly on or before the due date as set out on the account.
 - 3.2 Lump Sum fee (where applicable) shall be the amount stated in the Quote, provided that, if the scope of the project exceeds that originally predicted, then the fee shall be increased by negotiation on a rate per hour basis.
 - 3.3 Time charges (where applicable) will apply if the scope of the project exceeds that originally predicted; MEM will charge extra to actual time spent for services on rate per hour basis.
 - 3.4 Where the Client fails to pay the fee, accounts rendered by MEM on or before the due date as set out on the account:
 - a.) MEM shall be entitled under the Security of Payment Act the referral of any disputed claim to an adjudicator for determination if due dates or statutory timeframes are not met and the Client fails to pay whole or part of claimed amount on or before due date.
 - b.) If the Client does not make a payment by the date stated in an invoice or as otherwise provided for under agreement, MEM shall be entitled to do any of the following:
 - i. charge interest on the outstanding amount at the rate of 10% per year, accruing daily past the date stated in an invoice due date.
 - ii. the Client shall pay all costs and expenses (including without limitation, legal cost) incurred by MEM in pursuing any overdue payment.
 - iii. Consultancy Services may be suspended.
4. The Client shall:
 - 3.5 Provide to MEM all necessary material in a timely manner to facilitate the provision of Services;
 - 3.6 Advise MEM of any changes or variations.
5. The Client may vary the Services by providing written direction to MEM subject to an adjustment to fee and/or date for completion of the Services as amended, to reflect additional costs to MEM.
6. MEM may vary the Services by notifying the Client of necessary modifications to the Scope of Works or cost increases due to circumstances beyond the control of subject to reasonable adjustment to the fee and/or date for completion of the Services to reflect additional work to MEM.
7. An amount equal to Goods & Services Tax will be added to all invoices as required by law.
8. In relation to Services:
 - 8.1 All intellectual Property provided by MEM in relation to the Services shall remain the property of MEM. All intellectual Property subsisting in or created pursuant to the Project and the Scope of the Works vests in MEM as and when created;
 - 8.2 MEM grants to the Client a non-exclusive royalty fee license to use all Intellectual Property subsisting in the Project subject to the payment to MEM of all monies owing under this Agreement;
 - 8.3 This license may be revoked if such payments are not made within 14 days of the due date for payment.
9. Both parties shall keep confidential any information regarding the Project and the other party's affairs unless disclosure is agreed to by the other party except insofar as such information becomes public knowledge.
10. Liability:
 - 10.1 Despite any other provision under the Services or any duty of MEM to the Client implied by law (to the fullest extent possible), MEM is not liable to the Client for any loss or liability whatever or however incurred or arising.
 - 10.2 In particular and without prejudice to the generality of clause 10.1 MEM is not liable to the Client for any loss or liability which the Client incurs directly or indirectly as a result of:
 - a.) any acts, omissions or defaults of parties engaged by the Client,
 - b.) loss, damage or any claim caused or contributed to by the Client or any other party whether indirect, special or consequential.
11. The Client indemnifies MEM on demand against any third-party claim, demand, action, damage, loss or expense incurred by MEM directly or indirectly arising out of the provision of the Services or its performance under this Agreement.
12. The maximum liability of MEM to the Client for any non-performance of the Services or any breach under this Agreement whether in contract or tort is limited to the lesser of the sum of \$50,000 or the fee(s) paid for Services under the Purchase Order or incorporated by reference or written approval to commence Services or written or verbal acceptance of proposal received from MEM.
13. In relation to this Agreement:
 - 13.1 MEM gives no warranties, undertakings, inducements, or representations whether express or implied in relation to the Services;
 - 13.2 Where any statute implies any term, condition, or warranty that the statute avoids or prohibits provisions in a contract excluding or modifying the applications of or exercise of or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included. However, liability to the Client for any breach of such term, condition or warranty shall be limited to the resupply of the Services.
14. This Services may be terminated, suspended or deferred by either party if:
 - 14.1 A breach of any terms and conditions has occurred and has not been remedied within 14 days of receipt of a written notice requesting remedy of the breach;
 - 14.2 Payment of a MEM invoice is more than 14 days outstanding from the due date for payment;
 - 14.3 The other party becomes insolvent or in the reasonable opinion of one party is unable to perform its obligations;
 - 14.4 Issues outside the control of MEM preclude or prevent it from performing the Services.
15. Quotes:
 - 15.1 The client acknowledges that any quote provided by MEM is indicative only and does not constitute a binding representation, warranty, or covenant in relation to the actual future costs of any Works or Project;
 - 15.2 The Client must not rely on a Quote for the purposes of any Work or Project and the Client agrees to release and hold MEM from any claim relating to it or any other party's reliance on a quote.
16. Neither party may assign its interest without the prior written consent of the other.
17. MEM may subcontract for the performance of the whole or any part of the Services.
18. Without prejudice to any party's right to seek urgent interlocutory relief, any dispute arising out of interpretation of or a party's compliance with the Services will be referred by either party:
 - 18.1 first, to a nominee of each party for mediation within 14 days of written notice identifying such dispute; and
 - 18.2 secondly, failing resolution of the dispute under paragraph 18.1, to a mediator to be appointed by the Institute of Arbitrators and Mediators Australia to mediate the dispute and whose decision shall be binding on both parties.
19. Both parties shall be entitled to legal advice and representation in respect of the mediation under clause 18.2 and both parties will share the cost of the mediation under clause 18.2 equally.
20. MEM shall not be taken to have agreed to any amendment or waiver of any provision of these Terms and Conditions unless agreed to in writing.