



Document	PO-005	Prepared Date	21/03/2018
Version	02	Revision Date	20/04/2018

Ingenia Standard Terms of Business

1. DEFINITIONS

Agreement means this document;

Authority means any government or any governmental, semi-governmental or local government authority or administrative or judicial body or tribunal, department, commission, public authority, Agency, minister or statutory authority;

Claim means any claim, demand, action, proceeding, cost, expense and liability, however it arises and whether present or future, fixed or unascertained, actual or contingent;

Client means the person identified in the Submission/Proposal or Letter of Engagement / Acceptance and its successes and assigns;

Client Representative means the person appointed by the Client to act as representative of the Client;

Confidential Information means all information and records, in whatever form, except information that: becomes publicly available other than as a result of a breach of any Confidentiality obligation; is obtained from a third party without breach by that third party of any confidentiality obligation; or was already in a party's possession (as evidenced by written records) when provided by or on behalf of the other party;

Fee means the amount detailed in the Submission/Proposal or Letter of Engagement/Acceptance;

GST has the same meaning as in GST Law;

GST Law has the same meaning as in the meaning is in the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) as amended or replaced from time to time;

Intellectual Property means all trademarks, copyright, patents, registered designs, circuit layouts, and rights in computer software, databases and lists, rights in Inventions, know-how and trade secrets, manuals, quality assurance programs, quality manuals and all other intellectual property, whether registered or unregistered (including applications for the grant of any of them) and all rights or forms of protections having equivalent or similar effect to any of them which may subsist anywhere in the world, which are used in connection with the Services, including the goodwill and all rights of action, powers and benefits in respect of the same and all other intellectual property as defined in Article 2 of the 1967 Convention establishing the World Intellectual Property Organisation;

Ingenia means Genius Consulting Pty Ltd Trading as Ingenia ABN 91 615 110 033;

Offer means Ingenia's letter of offer or tender application to perform requested services to the Client including but not limited to engineering, asset, risk and/or project management services;



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Reimbursable Expenses means all out of pocket expenses incurred by Ingenia in performing the Services including but not limited to expenses associated with travel and accommodation, on-site attendance, equipment use/hire, communications, disbursements, computer usage and fees charged by other professional consultants;

Services means the services Ingenia is required to supply to the Client as specified in the Offer;

Tax Invoice has the same meaning as in the GST law;

Taxable Supply has the same meaning as in the GST law;

Term means the period specified in the Submission/Proposal or Letter of Engagement/Acceptance or if unspecified, such date as to be determined by Ingenia

2. THE SERVICES

2.1 Ingenia will provide the Services to the Client for the Term.

2.2 The Client acknowledges that in performing the Services, Ingenia will be relying upon information provided by the Client, or on the Client's behalf, and that the adequate performance of the Services is dependent on full, timely and accurate disclosure of all relevant information by or behalf of the Client.

2.3 The Client agrees that in performing the Services, certain services or work may be required to be performed by a specific Authority or another professional or specialist. Unless specifically included, the Client agrees that such work will not be included in the Services and must be arranged by the Client at its own cost upon notification by Ingenia under clause 3.5

2.4 The Client agrees that Ingenia may take recommendations to the Client relating to the Client's implementation of these recommendations, however unless specifically instructed or requested by the Client, Ingenia has no authority to direct or supervise the means, methods, techniques, sequences or procedures of implementation selected by the Client.

2.5 Any opinion of proposed or estimated costs prepared by Ingenia is supplied for the general guidance of the Client only. The Client agrees that Ingenia has no control over competitive bidding or market conditions and Ingenia cannot guarantee the accuracy of such opinions.

2.6 The Client recognises that Ingenia will rely on Client provided or otherwise obtained market, business, physical, technical, operational and other information, assumptions, data and conditions. Such information will often give rise uncertainty with respect to the interpretation of the information, despite the use of due professional care in performing the Services. The parties agree that the Services are provided solely for use by the Client and Ingenia does not accept (and the Client must hold harmless Ingenia from) liability for any Claim or loss suffered or incurred by any third party placing any reliance on the performance of the Services or any documents, materials or advice arising from or in connection with the Services.

2.7 Subject to earlier termination of this Agreement under clause 17, this Agreement will expire on completion of the Term.



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3. ROLE OF Ingenia

3.1 In performing the Services, Ingenia shall exercise the degree of skill, care and diligence ordinarily exercised by members of the respective consulting profession performing the Services or services of a similar nature.

3.2 If Ingenia is required to exercise its professional judgement to decide between the interests of the Client and a third party with whom the Client has a contract, it shall do so independently and as required by the terms of that contract.

3.3 Ingenia shall perform the Services in a timely manner to the extent within its control.

3.4 Ingenia must notify the Client in writing as soon as it becomes aware of anything that may change the scope, timing or cost of the Services. The parties must negotiate in good faith to agree what adjustments, if any, are required as a consequence.

3.5 As soon as practicable, Ingenia must notify the Client of any work that must be undertaken by a specific Authority or another professional or specialist as specified in clause 2.3 of this Agreement

4. ROLE OF THE CLIENT

4.1 The Client shall provide to Ingenia, briefing and all information necessary to allow Ingenia to adequately perform the Services.

4.2 The Client shall respond to all questions put by Ingenia relating to the Services in such reasonable time as not to delay its work.

4.3 The Client shall allow Ingenia access to the Client's premises and any other places as necessary to enable Ingenia it to properly perform the Services.

4.4 The Client shall advise Ingenia and keep Ingenia notified of any changes to the Client Representative and the Client agrees that the Client Representative shall have the authority to act on behalf of the Client for all purposes in respect of the agreement between Ingenia and the Client.

4.5 The Client must notify in writing as soon as it becomes aware of anything that may change the scope, timing or cost of the services. The parties must negotiate in good faith to agree what adjustments, if any, are warranted as a consequence.

4.6 The Client must take out and maintain all insurances that a prudent organisation would reasonably be expected to take out in the context of a similar project to that in respect of which the Services are to be provided.

4.7 The Client must use all reasonable endeavours to ensure that no events or circumstances arise which may compromise Ingenia's ability to be able to perform the Services in a timely and professional manner.



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5. PAYMENT TO INGENIA FOR SERVICES

5.1 In consideration of the agreement by Ingenia to perform the Services, the Client agrees to pay to Ingenia the Fees and all Reimbursable Expenses.

5.2 A mark up of 10% will be applied to the total cost of all Reimbursable Expenses to cover any associated finance, administration and coordination costs Ingenia may incur.

5.3 All monies payable by the Client to Ingenia shall be paid within 30 days of invoice date.

5.4 If the Client does not pay Ingenia in accordance with clause 5.3: (a) the Client will pay interest at the rate of 2% above the interest rate prescribed by the Penalty Interest Rates Act 1983 (Vic) as at the due date, payable monthly from the due date on any amounts due payable to Ingenia under this Agreement until payment is received in full; and (b) Ingenia may suspend the performance of the Services until the outstanding amount including any interest under clause 5.1(a) is Received. Ingenia shall not be liable for any costs or delays incurred by the Client caused directly or indirectly by the exercise of this right.

5.5 If the Client disputes any portion of the amount of an account submitted by Ingenia, the client is still required to pay that portion of the account which is not in dispute by its due date and shall notify Ingenia in writing of the reasons for disputing the account. The parties must seek to resolve the dispute. If the parties are unable to reach agreement within twenty-one days of the Client's notice, the dispute may be determined in accordance with clause 15 of this Agreement.

5.6 If there is a change in the scope, order or timing of the Services, Ingenia will be entitled to amend the Fee by an amount reasonable in the circumstances. Ingenia will provide the client with an amended scope of and schedule for the provision of the Services and an amended Fee of each, which will be deemed to have been approved by the Client if not objected to within 10 business days after receipt by the client. In the event the Client does not agree with the amended Fee, the matter will be determined under the dispute resolution provisions specified at clause 15.

5.7 If after the date of Agreement, there is any change to laws, licences, permits, approvals or statutory authorities relevant to the Services and that change directly or indirectly increases the costs of performing the Services or results in any loss being incurred by Ingenia, then the Fee shall be increased accordingly.

6. GST

6.1 Unless expressly stated otherwise, all prices set out in this Agreement are inclusive of GST.

6.2 Where GST is imposed on any supply made under this Agreement the recipient of the Taxable Supply must pay or provide the GST exclusive consideration for the supply and an additional amount calculated by multiplying the value of that GST exclusive consideration by the prevailing GST rate.

6.3 Neither party is required to pay any amount in respect of GST to the other party until a valid GST Tax Invoice has been issued in respect of that GST.

6.4 Where an adjustment event in relation to a supply under this Agreement has occurred, the relevant party must give an adjustment note to the other party no later than 28 business days after that adjustment event.



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6.5 The parties warrant that all GST tax invoices provided will comply with all requirements under the GST Law.

7. RELATIONSHIP OF THE PARTIES

7.1 Both parties acknowledge that Ingenia will supply the Services as an independent contractor.

7.2 Nothing in this Agreement shall be construed as constituting any party as an agency partner, joint venture or legal representative of the other party for any purpose whatsoever.

8. SCOPE OF LIABILITY

8.1 Ingenia will not be liable for any cost, damage, injury or loss to any third person or property arising from or in connection with or as a result of the performance of the Services, and the Client indemnifies Ingenia from any such costs, damages, injury or loss.

8.2 Where the Services involve any analysis or test to be made by Ingenia or its servants, agents, suppliers or sub-contractors, then Ingenia or its servants, agents, suppliers or sub-consultants shall not be liable for any loss or damage to or deterioration or destruction of any of the Client's samples or property to be tested or analysed, unless due to the negligence of Ingenia.

8.3 The liability of Ingenia to the Client in respect of any Claim arising out of or in connection with the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be limited (to the extent permitted by law) at Ingenia's option to: (a) the supplying of the Services again; (b) the payment of the cost of having the Services performed again; or (c) the refunding of any sums paid in respect of the Services.

8.4 As far as the law permits, Ingenia shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of one year from the completion of the Services and the Client and persons claiming through or under the Client shall not be entitled to commence any action or claim whatsoever against Ingenia in respect of the Services after that date.

8.5 The Client acknowledges and agrees that neither Ingenia, nor its members, servants, agents or sub-consultants, will be liable under the law of contract, tort or otherwise for economic loss, whether direct or consequential, suffered by the client or any indirect or consequential loss of any kind.

9. WARRANTIES

9.1 Ingenia warrants only that it will exercise reasonable skill, care and diligence in the performance of the Services.

9.2 To the extent permitted by law, the Client acknowledges that Ingenia makes no warranty as to any matter concerning the Services provided by it under this Agreement.

10. RELEASE AND INDEMNITY



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10.1 Subject to clause 8 and 9, the Client releases and forever discharges Ingenia, its members, servants, agents, contractors, successors and assigns from all Claims arising directly or indirectly out of or in connection with the Services.

10.2 Subject to clauses 8 and 9, the Client will indemnify and hold Ingenia harmless against all Claims directly or indirectly incurred or suffered by Ingenia as a result of and in connection with: (a) with the performance of the Services; or (b) the breach or non-performance of any of the obligations of the Client, whether express or implied under this Agreement; or (c) any negligent act by the Client; or (d) the performance of any related services by persons other than Ingenia

11. INTELLECTUAL PROPERTY

11.1 All Intellectual Property provided by Ingenia in connection with the Services shall remain vested in Ingenia as the absolute legal and beneficial owner of that Intellectual Property.

11.2 Nothing in this Agreement assigns to the Client any Intellectual Property of Ingenia.

11.3 Ingenia grants to the Client a non-transferable, non-exclusive, revocable and royalty-free licence to use the Intellectual Property only for the purposes to that in respect of which those Services are to be provided.

11.4 The Client shall not use or make copies of any Intellectual Property or provides any Intellectual Property to a third party unless prior approval is given by Ingenia.

12. ADVERTISING AND PUBLICITY

12.1 Ingenia's contribution to the Client must be recognised and mentioned in or on any publicity associated with or connected to the Services.

13. SUBCONTRACTING

13.1 Ingenia may sub-contract the performance of all or part of its obligations under this Agreement in its absolute discretion and without the consent of the Client.

13.2 Ingenia will remain responsible for the provision of the Services regardless of whether any of the Services have been subcontracted.

14. CONFIDENTIALITY

14.1 No party shall disclose any Confidential Information of the other party disclosed under this Agreement to any person except: (a) to those of its personnel who require the information for the performance of the Services; (b) with the consent of the other party; or (c) if required to do so by law.

15. DISPUTE RESOLUTION

15.1 Neither party may start arbitration, tribunal or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.



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15.2 A party claiming that a dispute has arisen must notify the other party of the dispute in writing.

15.3 Within 7 days after a notice of dispute is given under this clause, each party must nominate in writing to the other party a person of sufficient seniority authorised to settle the dispute on its behalf.

15.4 During the 30 day period after a notice of dispute is given under this clause (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the dispute.

15.5 If a dispute is still not resolved within 30 days after the notice of this dispute is given (or if the parties agree a longer period, that longer period), the dispute must be referred to mediation.

15.6 Both parties must try to agree on a mediator. If they fail to agree within seven (7) days of service of the mediation notice, either party may apply to the President of the Law Society of South Australia to appoint a mediator.

15.7 Each party must pay equal share of the mediator's fee.

15.8 The parties must comply with the mediator's instructions about the conduct of the mediation.

15.9 If the mediation is not settled within twenty one (21) days after the mediator has indicated his acceptance of the appointment (or within any other period the parties agree in writing), the mediation must cease.

16. INSURANCES

16.1 Ingenia will maintain insurance coverage for professional, public liability, motor vehicle, workers compensation and employer's liability in amounts in accordance with legal requirements and its own business requirements. Certificates evidencing such insurance coverage will be provided to the Client on request. For projects involving construction, the Client agrees its construction contractor, if any, to include Ingenia as an additional insured on its policies relating to the project.

17. TERMINATION OF SERVICES

17.1 Ingenia may immediately terminate its obligations under this Agreement : (i) if monies payable to Ingenia are outstanding for more than 60 days; (ii) if there is a breach by the Client of its obligations hereunder, which breach has not been remedied within 30 days of written notice from Ingenia requiring the breach to be remedied, (iii) If the Client has appointed to it a controller, administrator or other third person to administer its affairs or if it enters into any scheme of arrangement with creditors then it is deemed to be in default of its obligations under this Agreement, (iv) for convenience.

17.2 Either party may terminate their obligations under this Agreement upon giving the Client 60 day's written notice of its intention to do so.

17.3 If this Agreement is terminated, the Client must immediately pay Ingenia any outstanding Fees and any other amount payable under this Agreement.



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17.4 Termination of this Agreement by either party does not affect: (a) any right of the parties which have accrued before the date of termination; and (b) the rights and obligations under clauses 8, 9, 10, 11 and 14. 18.

18. GENERAL

18.1 This Agreement sets out the whole of the agreement for the provision of the Services. The Offer is incorporated in and made a part of this Agreement only to the extent of specifying the nature, quantity or objectives of the Services, and then only to the extent that such description is consistent with this Agreement. No other terms or conditions shall be binding upon Ingenia unless accepted in writing.

18.2 Neither party will be liable for any failure in the performance of its obligations or shall hold the other responsible for loss or damage or delays in performance caused by force majeure, acts of God, acts of terrorism or other events beyond their control that could not have been reasonably foreseen and prevented. Should such acts or even events occur the parties shall use their best endeavour to overcome the difficulties and to resume provision of services as soon as reasonably possible.

18.3 The Client may not transfer, sublet or assign any of its rights or obligations under this Agreement without the prior written consent of Ingenia, given at its absolute discretion.

18.4 This Agreement may be amended only in writing signed by both parties.

18.5 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

18.6 A right under the Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent set out in that waiver.

18.7 South Australian law governs the Agreement. Each Party irrevocably submits to the exclusive jurisdiction of the South Australian Courts and Courts competent to hear appeals from them.

18.8 If a provision of this Agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this Agreement. All other provisions of this Agreement remain in full force and effect.

18.9 A party notifying or giving notice under this Agreement must notify: (a) in writing; directed to the recipient's address be it the Client's or Ingenia's; and (b) hand delivered or sent by prepaid post or facsimile to that address. A notice given in accordance with this clause will be taken to have been received: (c) if hand delivered, on delivery; (d) if sent by prepaid post, 7 days after the date of posting; or (e) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within 8 business hours after that transmission, the recipient informs the sender that it has not received the entire notice

19. APPLICATION OF THESE CONDITIONS

19.1 Receipt by Ingenia of the Client's instructions to proceed with the Services shall constitute an automatic acceptance by the Client of this Agreement which shall thereafter bind the parties.