

STANDARD TERMS & CONDITIONS - CLIENT'S

PROCESS ENGINEERING TECHNOLOGIES PTY LTD (PET) (ABN 79 065 061 798)

Please read these Terms and Conditions carefully as they specify the basis of the Agreement under which the Goods and Services are provided to you (*the Client*) by PET. If you accept the Quotation these Standard Terms and Conditions with the Quotation and any Special Conditions will be and will constitute the whole of the Agreement with you.

1. OUR RESPONSIBILITIES

PET shall provide the Goods and Services in accordance with the Agreement.

2. YOUR RESPONSIBILITIES

You (*the Client*) shall ensure compliance with these Terms and Conditions including ensuring that payment is made for the Goods and Services provided within the prescribed times of the Agreement.

3. DEFINITIONS AND EXPLANATIONS

In these Standard Terms and Conditions, and the Quotation and any Special Conditions, the following words and phrases will have the following meanings:

Authority includes any government or governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Australian Standard means a standard published by Standards Australia.

Business Day means a day on which trading banks are open for business in the state in which the Services are to be performed excluding a Saturday, Sunday or public holiday;

Claims means any claims, demands, debts, accounts, actions, expenses, costs, liens, liabilities and proceedings of any nature whatsoever;

Charges means the charges referred to in the Quotation for the provision of the Services under this Agreement;

Commencement Date means the date (if any) specified in the Quotation or if no date is specified, the date which PET notifies to You in writing as the date for commencement of performance of the Supply;

Agreement means the agreement between us comprising, in decreasing order of priority to the extent of any inconsistency, the Special Conditions (if any) identified in the Quotation, the Quotation (including any annexures) and these Standard Terms;

Dispute means a dispute arising out of or relating to this Agreement, including a dispute as to breach or termination of this Agreement or as to any Claims;

Economic Loss means loss of revenue, loss of profit, loss of custom, loss of goodwill, loss of overhead recovery, loss of business opportunity, loss of the use of money, loss of use of property, loss of contract, loss of production, loss or payment of financing charges or cost recovery, opportunity cost, payment of liquidated sums, payment of damages (whether under any other agreement or otherwise).

Equipment means any of Your or PET's equipment used in connection with Services;

Expiry Date means the expiry date specified in the Quotation;

Force Majeure Event means any act, omission or circumstance over which PET could not reasonably have exercised control, including war, sabotage, civil commotion, national emergency, breakdown of plant, machinery or equipment, strike or other labour difficulty (whether or not involving employees of PET);

GST means a tax imposed under GST Law;

GST Law has the meaning given in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999(Cth);

Insolvency Event means:

- a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- a party enters into any arrangement with creditors;
- a party becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 (Cth) including having a receiver or administrator appointed over all or any part of its assets; or
- anything analogous or having a substantially similar effect to the events specified in (a) to (c) above occurs in relation to a party in any jurisdiction;

Intellectual Property means trademarks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;

Invoice means an invoice issued by PET under this Agreement for the provision of the Supply;

Law includes any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise;

People include employees, agents, consultants and subcontractors but PET's People do not include You or Your People;

Roster Hours means the hours stated in the Agreement or as otherwise agreed in writing between PET and You;

Quotation means the Quotation attached to these Standard Terms or any other confirmation issued by PET to You from time to time for the supply of the Services which is stated or deemed to incorporate these Standard Terms;

Services means the services described in this Agreement and any other services that PET agrees to provide to You under this Agreement, including the delivery of Goods;

Site Regulations means any regulations of general application governing access to, and performance of work at, Your Site by contractors;

Standard Terms means these Standard Terms and Conditions for the supply of Services and/or Goods;

Supply means the performance of the Services and/or the delivery of the Goods by PET under the terms of this Agreement;

Tax includes any GST, sales tax, levy, charge, impost, duty, fee, deduction, customs duty or any other tax or charge or duty which is assessed by any Authority;

Timeline means the timeline for Supply by PET of the Services and/or the delivery of Goods as agreed between the parties;

PET means all entities in "the PET Group" including PET Engineers Pty Limited (ACN 077 167 116) and PET Manufacturing Pty Ltd (ACN 139 846 745);

PET Representative means the person identified in the Quotation as PET's contact for the purposes of the Agreement, or such other person as PET may notify You in writing from time to time;

Work means the work to be performed by PET People in relation to the provision of Services in accordance with the Quotation; and

Your Site means a site owned and occupied by You any of Your clients, agents or contractors to be attended by PET's People in relation to the provision of the Services.

A reference to a Statute Rule or Regulation is a reference to that Statute Rule or Regulation as amended, re-enacted or modified from time to time.

A reference to any party will include their lawful successors and assigns.

4. BINDING AGREEMENT

- 4.1. This Agreement is entered into and will be binding on PET and the Client upon the Client's acceptance of the Quotation. The Client agrees that it will be deemed to have accepted the Quotation if it:
 - a) Accepts the Quotation in writing by facsimile, email or letter; or
 - b) Takes delivery or collects any of the Goods; or
 - c) The Services are performed.
- 4.2. Until the Client has accepted the Quotation, PET may at any time withdraw the Quotation by email, facsimile or letter to the Client.
- 4.3. All Services and Goods are available as listed in the Quotation at the time of the Quotation. The Quotation is valid for thirty days from the date of the Quotation and must be accepted by the Client in writing.
- 4.4. The date of this Agreement is the date of acceptance by the Client of the Quotation.

5. TERM

The Agreement commences on the date of execution of the Agreement and, unless otherwise terminated, continues until:

- a) the Expiry Date; or
- b) if performance of any part of the Supply remains incomplete at the Expiry Date, the Agreement will remain in force until performance of the incomplete part of the Supply has been completed.

6. TERMS OF PAYMENT

- 6.1. The Client will pay to PET the Quoted Price (plus GST) without deduction as per the Payment Terms set out in the Quotation unless otherwise specified in the Quotation, the Quoted Price (plus GST) will be paid in full within thirty (30) days of the date of the relevant PET Tax Invoice.
- 6.2. Any Discount on Goods provided by PET in the Quotation will only be applied if the Client makes payment in full in accordance with the Payment Terms.
- 6.3. PET may raise Invoices for progress claims for Goods delivered or Services supplied irrespective of whether all of the Services or Goods have been supplied.
- 6.4. Any other Tax imposed in relation to the Supply must be paid by You in addition to and with the amount payable for the relevant Supply.
- 6.5. Charges are those applicable at the date of the Agreement and, unless otherwise stated in the Agreement, are subject to adjustment by PET by reason of any:
 - a) variation in the cost of labour, material and transport;
 - b) variation in exchange rates, customs duty, freight insurance, shipping expenses and cartage;
 - c) variation in the amount of work required to provide the Supply due to a variation in specification approved by the parties;
 - d) other charges affecting the cost of production or performance; and
 - e) change to the Delivery Point.
- 6.6. Unless the Agreement states otherwise, if the performance of the Supply is not commenced within 30 days after the Commencement Date (other than due to the fault of PET), PET may revise its Charges for the Supply.
- 6.7. All Work will be performed during Roster Hours unless otherwise agreed in writing by PET in which case the Charges will be increased in accordance with the rates set out in the Quotation or at the rates provided by PET to You.
- 6.8. PET may charge You, at the rates set out in the Quotation or at the rates provided by PET to You, for the provision of any additional Supply by PET which is due to any interruption, delay or the provision of incorrect or insufficient information by You or Your People or compliance with any statutory direction issued by any of Your People.
- 6.9. PET will notify you in writing of any adjustment to the Charges.

- 6.10. Despite clause 6.1 or any other agreement between PET and You regarding payment, PET may demand immediate payment in cash of all amounts outstanding (whether then due and payable or not):
 - a) upon the happening of any one or more of the events specified in clause 15, which entitle PET to cancel the Agreement; or
 - b) if PET considers that Your creditworthiness has become unsatisfactory.
- 6.11. In the event of default by You in the payment of any moneys due to PET under the Agreement, PET may, without prejudice to any other remedies available to it:
 - a) withhold performance of the Services until You pay all amounts payable to PET under the Agreement; and
 - b) close Your credit account (if any) with PET.
- 6.12. You must not withhold payment of any amount stipulated in an Invoice that is not in dispute.
- 6.13. If You do not approve an Invoice, You must advise PET in writing stating the amount of the payment (if any) which is, in Your opinion, payable to PET and the reason for any difference (Certificate) within 5 Business Days after receipt of the Invoice.
- 6.14. By the time set out in clause 6.1, You must pay PET at least the amount shown in Your written advice.
- 6.15. The parties must use their best endeavours to resolve any dispute in relation to an Invoice as soon as practicable, and if they are unable to resolve the dispute within 5 Business Days from the date on which You issue written advice, the matter may be treated as a Dispute under clause 18.
- 6.16. On determination of the amount properly payable, You must pay to PET the difference, if any, and interest in accordance with clause 6.1 on such amount.
- 6.17. If You do not make a payment or part payment due under this Agreement, PET may charge and You shall pay interest on all overdue amounts at a rate of the lesser of 1% per month and the maximum amount permitted by law, and the parties agree that such interest is not a penalty but is a true measure of the damages incurred by PET as a result of late payment by You.

7. SERVICES

- 6.1. PET will provide Services to You subject to the Agreement.
- 6.2. PET may refuse to provide any part or all of the Services if, in its reasonable opinion, providing the relevant part or all of the Services may present a safety hazard for any person involved in providing the Services.
- 6.3. Any times for the performance of Services made known to, or requested by, You (whether by way of the Quotation, in the Timeline or otherwise) are estimates only and PET will not be liable for any Claim for late or non-performance.
- 6.4. If:
 - a) PET People are ready to perform the Services in accordance with the Timeline, but You are unable or unwilling to allow those members of PET People to commence performance of the Services; or
 - b) the performance of the Services is delayed or suspended for any reason other than the default of PET or any of the PET People,PET may Invoice You for the reasonable costs and expenses of the delay or suspension.
- 6.5. You must not, during the Term, engage any third party to perform services equivalent to the Services (or any part of the Services) nor perform those services Yourself except:
 - a) with PET's prior written consent; or
 - b) subject to clause 6.6, You are satisfied, acting reasonably and after consulting with PET, that, for reasons which do not constitute a breach of clause 15 of these Conditions, PET is unable to perform the relevant Services in accordance with the Agreement.
- 6.6. If clause 6.5 applies, You may perform, or engage a third party to perform, such services only to the extent that PET is unable to perform the relevant Services in accordance with the Agreement.

8. VARIATIONS TO THE WORK

- 8.1. You must not:
 - a) vary the scope of the Work, from that disclosed to PET; or
 - b) require PET People to attend a site that PET has not previously attended for the purposes of this Agreement, unless You have:
 - c) provided reasonable written notice to PET of Your intention to vary the Work; and
 - d) disclosed to PET, in relation to the proposed scope of the Work as varied, the matters set out in clauses 8.1(a) and 8.1(b).
- 8.2. Nothing done under this clause 8 limits, or relieves You of Your obligations under any other provision of this Agreement.

9. GOODS

- 9.1. PET will supply the Goods to You as described in the Quotation subject to the Agreement.
- 9.2. Risk in the Goods passes to You on Delivery of the Goods in accordance with clause 9.3.
- 9.3. Delivery will be taken to have occurred at the time when the Goods are delivered to the Delivery Point (including by collection by or on behalf of You).
- 9.4. Any Delivery Date is an estimate only and PET will not be liable to You for any Claim arising from late or non-delivery of the Goods. Without limiting the preceding sentence, any Delivery Date requested by You must be not earlier than any delivery lead time made known by PET to You.
- 9.5. PET may deliver any Goods by instalments and each instalment will be deemed to be sold by PET to You under a separate agreement. Failure of PET to deliver any instalment will not entitle You to cancel the balance of the instalments. If You

default in payment of any instalment, PET may elect to treat the default as a breach of this Agreement relating to each other instalment.

- 9.6. Title in the Goods does not pass to You until You have paid for them in full in accordance with the Agreement.
- 9.7. PET will use reasonable endeavours to ensure You receive the full benefit of all warranties provided by any manufacturer of any Goods but, except as otherwise expressly stated in the Agreement, does not make any warranties or representations in relation to the Goods.

10. OCCUPATIONAL HEALTH AND SAFETY

- 10.1. Each party must at all times comply with its own occupational health and safety obligations under all applicable Laws.
- 10.2. You must:
 - a) notify PET immediately of any change to Your policies in relation to occupational health, safety and environment including the Site Regulations (if any);
 - b) provide PET People with such access to Your Site and information as PET reasonably requests in relation to PET's compliance with its occupational health and safety obligations in relation to the Agreement;

11. INTELLECTUAL PROPERTY

Notwithstanding any other provision of the Agreement, and unless otherwise agreed in writing prior to entry into the Agreement, all intellectual property rights arising from or developed in the course of PET performing its obligations under the Agreement shall vest or remain with the PET for its sole and unrestricted use and benefit.

12. LIABILITY

- 12.1. You are solely responsible for any Claims arising as a result of or in connection with Your use of the Goods other than in accordance with any specification or instruction provided by PET to You in relation to those Goods.
- 12.2. Except as otherwise provided in the Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Supply are excluded to the fullest extent permitted by Law.
- 12.3. Despite any other provision of this Agreement, You agree that PET's liability to You (including any party claiming through You) for any Claim for loss or damages incurred in connection with this Agreement for breach of contract (including under any indemnity), tort (including negligence) and for any other Claim whether under statute, in equity, at law or otherwise will be as follows:
 - a) if PET is in breach of this Agreement, PET's liability is strictly limited to:
 - for goods, the replacement of the defective goods or the repair of the defective goods or the repayment (or allowance) of the invoice price of the defective goods, at PET's option;
 - for services, the supply of the services again or the payment of the costs of having the services supplied again, at PET's option; or
 - b) where the loss or damage is not covered by clause 12.3(a), PET's maximum liability to You (or any party claiming through You) will be an amount equivalent to the proceeds actually recovered by PET under any policy of insurance held by PET in relation to the loss or damage.

13. INDEMNITIES AND INSURANCE

- 13.1. You must indemnify PET from all Claims for:
 - a) injury to or death of any person (including PET People or Your People) or damage to or destruction of any property or equipment caused by any negligent acts or omission by You or Your People or a breach of the Agreement by You;
 - b) failure by You or Your People or PET People under direction of You or Your People to comply with any Law; and
 - c) without limiting clauses 13.1(a) and (b), breach by You or Your People, of any of Your obligations under the Agreement, or any negligent act or omission by You or Your People relating to the performance of the Agreement.
- 13.2. Your liability to indemnify PET pursuant to clause 13.1 is reduced to the extent any act or omission of PET caused or contributed to the injury, damage or loss.
- 13.3. You must keep current at all times during the provision of the Supply:
 - a) a policy of public risk insurance applicable to Your Site for an amount of not less than \$10 million in respect of any one single action or event or such higher amount as PET may from time to time reasonably require;
 - b) workers compensation insurance in accordance with all relevant Laws; and
 - c) a policy of insurance covering PET's Equipment, at all times while at Your Site, for its full replacement value against loss, damage, theft and destruction.
- 13.4. At all times when the Goods are at Your risk until PET receives payment (including while the Goods are in transit), You must effect and maintain insurance covering loss of, or damage to, the Goods for their full replacement value.

14. CONFIDENTIALITY

You must treat, and require its employees, agents and subcontractors to treat, all confidential information of PET given in connection with the Agreement and identified as having or marked with, a classification indicating its confidentiality, according to that classification. This clause does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of this clause.

15. TERMINATION

- 15.1. The Agreement shall terminate:
 - a) upon completion of the Service and payment of all monies owing by You under the Agreement; or
 - b) upon mutual agreement of the parties that has been reduced to writing and signed by both parties; or

- c) at the discretion of PET, including but not limited to, if You commit any act of bankruptcy, enters into any composition with Your creditors or do any act which would render You liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation of You or if a receiver, statutory manager or similar functionary is appointed in respect of its assets.

15.2. If the Agreement is terminated in accordance with clause 14.1(b), You shall pay for the Service or part of the Service that was provided by PET prior to termination.

16. SUSPENSION

16.1. If You breach the Agreement, PET may suspend the Supply until the breach or default is rectified to PET Representative's satisfaction.

16.2. The exercise of PET's right of suspension under clause 15.1 does not restrict or prevent PET from exercising its rights of termination under clause 14.

17. FORCE MAJEURE

PET:

- a) will not be liable for any delay or failure to provide the Supply if such failure or delay is due to a Force Majeure Event; and
- b) may terminate the Agreement by written notice to You if the Force Majeure Event continues for more than 30 consecutive days.

18. DISPUTE RESOLUTION

18.1. A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 18 except where the party seeks urgent interlocutory relief.

18.2. A party claiming that a Dispute has arisen under or in relation to this agreement must give written notice to the other party to this agreement specifying the nature of the Dispute.

18.3. On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.

18.4. If the parties do not agree within 7 days of receipt of the notice (or any further period agreed in writing by them) as to the:

- a) dispute resolution technique and procedures to be adopted;
- b) Timeline for all steps in those procedures; and
- c) selection and compensation of the independent person required for such technique,

The Dispute will be referred to mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.

18.5. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 18 is to attempt to settle the Dispute concerned. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 18 for any purpose other than in an attempt to settle the Dispute concerned.

18.6. Unless otherwise agreed by the parties, the parties must continue to perform their obligations under this Agreement despite the existence of a Dispute.

19. JOINT AND SEVERAL LIABILITY

If You comprise 2 or more persons, each of You is jointly and severally liable for obligations and liabilities under the Agreement.

20. ASSIGNMENT AND SUBCONTRACTING

20.1. You may not assign or encumber a right or interest under the Agreement without the prior written consent of PET.

20.2. PET reserves the right to subcontract any part or all of the Supply.

20.3. PET may, at its discretion, assign its rights or subcontract its obligations in connection with the Services.

21. NO WAIVER

A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.

22. GOVERNING LAW AND JURISDICTION

The Agreement is governed by the Law applicable in New South Wales.