

# Standard Terms and Conditions

## EnviroAg Australia Pty Limited

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## 1. Introduction

- 1.1 This document contains the Standard Terms and Conditions applicable to EnviroAg Australia Pty Ltd.
- 1.2 The parties to this Agreement are EnviroAg Australia Pty Ltd (and/or its related bodies corporate as defined in the *Corporations Act 2001 (Cth)*) (“**EAA**”) and “**the Client**” (including its related bodies corporate as defined in the *Corporations Act 2001 (Cth)*).
- 1.3 EAA contracts and agrees with the Client to provide the services as described in clause 2 below.

## 2. Services

- 2.1 EAA shall provide the services to the Client in accordance with the requirements of and as requested by the Client from time to time (“the Services”).
- 2.2 If requested by EAA, prior to the commencement of the Services, the Client shall provide EAA with a written scope of works with detailed particulars of the Services.
- 2.3 A variation to the Services (“**Variation**”) may occur as a result of an unexpected or unanticipated change in circumstances of the Services or by request by either party.
- 2.4 Depending on the estimated value of work required for the variation, EAA may provide a written or verbal estimate to the Client and request confirmation to undertake the work. Written advice and confirmation can occur at the request of the Client or initiated by EnviroAg.
- 2.5 Whenever the value of a variation is expected to exceed \$5,000, a formal Notice of Variation will be provided by EAA and a signed agreement will be required from the Client. For variations below \$5,000 an email notification will be provided to the Client for approval. No work will be commenced prior to Client approval.

## 3. Fees

- 3.1 Prior to the commencement of the Services, the parties shall agree the fee determination for the Services, which may be any or a combination of:
  - (a) Ordinary time rates – the Client pays labour costs plus expenses. Labour costs will be charged on the basis of hours worked at the rates in the Fee Rates and Charges Schedule. Expenses will be charged in accordance with this Schedule.
  - (b) Priority time rates – the Client pays on a time costs basis plus expenses. Labour costs will be charged on the basis of hours worked at the rates in Schedule 1 plus 25%. These rates are payable for emergency, high risk or legal work.
  - (c) Fixed Price Agreement (“**FPA**”) – the Client pays a fixed fee for a defined scope of works.
- 3.2 A Variation to the Services, including to an FPA, will be billed at Ordinary or Priority rates, depending on the nature of the work required.
- 3.3 The Notice of Variation shall contain an estimation of fees for the Variation

## 4. Company Obligations

- 4.1 In performing the Services, EAA shall:
  - (a) consult with the Client as required;
  - (b) act in accordance with the reasonable instructions of the Client; and
  - (c) take reasonable care in the performance of the Services in accordance with the standards which usually apply to IT professions in Australia.
- 4.2 To the extent of matters within its control:
  - (a) EAA will perform the Services in a timely manner and in accordance with any timetable provided by it; and
  - (b) should EAA become aware of matters which will significantly affect the timing of the Services, it shall give written notice to the Client.
- 4.3 Any timetable provided to the Client by EAA (including but not limited to the Proposal and the Billing Schedule) shall only contain estimated timeframes for the Services and shall not be binding as essential terms of this Agreement.
- 4.4 EAA’s liability in relation to any loss arising out of or connected to this Agreement and/or the performance of the Services by EAA and/or its’ agents (including sub-contractors) shall be limited to the cost of making good any defective work and subject to law.
- 4.5 EAA shall obtain and maintain all proper insurances required by law in relation to the provision of the Services, including but not limited to workers compensation, professional indemnity and product and public liability insurance.

## 5. Client Obligations

- 5.1 Prior to the commencement of the Services, the Client shall nominate a person with appropriate authority to act as its representative in relation to the Services.
- 5.2 The Client shall issue clear and reasonable directions to EAA for the performance of the Services.
- 5.3 The Client shall promptly provide to EAA all access, information, documents and materials as requested by EAA and as reasonably required to perform or complete the Services.
- 5.4 The Client shall as soon as practicable make its premises, site, data or other property available to EAA as required for the performance of the Services.
- 5.5 Should the Client become aware of any matter, which may affect the timing of the Services, it shall give written notice to EAA.
- 5.6 The Client warrants that all information, documents and materials in whatsoever form supplied to EAA by the Client and/or its agents (including subcontractors) is fit for use by EAA to perform the Services and may be relied upon by EAA and/or its agents (including subcontractors) without further examination. EAA's liability in relation to any loss arising out of or connected to any information, documents or materials in whatsoever form supplied to EAA by the Client and/or its agents (including subcontractors) is hereby expressly excluded.
- 5.7 The Client shall obtain at its cost any approvals, authorities, licences and permits, which may be required in order to perform the Services unless otherwise agreed in writing.
- 5.8 The Client shall maintain all proper insurances required by law in relation to the provision of the Services, including but not limited to workers compensation, product and public liability insurance.

## 6. Intellectual Property

- 6.1 EAA retains all of its intellectual property rights including but not limited to trademarks, patents, copyrights, processes, know-how, registered designs or other like rights ("**Intellectual Property**") in all of its' drawings, reports, specifications, schedules of rates, processes, techniques, data, source or object code, designs, tables, construction, workings, functions, features, calculations, computer software, training manuals and other documents in whatsoever form or equipment used, made or conceived by EAA in connection with the performance of the Services.
- 6.2 The Client acknowledges that EAA owns all the Intellectual Property created by EAA in connection with the Services, that now exists or that later comes into existence unless otherwise agreed in writing.
- 6.3 The Client agrees to indemnify EAA fully against all liabilities, costs and expenses, which EAA may incur as a result of any breach of this clause by the Client.
- 6.4 The obligations accepted by the Client under this clause survive termination of this Agreement.

## 7. Confidential Information and other Property

- 7.1 Each party must keep the other party's "**Confidential Information**" (including but not limited to any information marked as confidential and any information received or developed by the other party in connection with the Services during the term of this Agreement which is not publicly available and relates to processes, equipment and techniques used in a party's business including but not limited to all information, data, drawings, specifications, documentation, source or object code, designs, workings, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans) confidential and not deal with it in any way that might prejudice its confidentiality.
- 7.2 Upon the termination of this Agreement, or when directed, all Confidential Information and property belonging to either party must be returned to each party, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information. If requested by the other party, a party shall also erase and destroy any copies of any software containing or comprising the Confidential Information in their possession or under their control.
- 7.3 The Confidential Information does not include information which:
  - (a) is generally available in the public domain otherwise than as a result of a breach of clause 7.1 by the other party; or
  - (b) was known by a party prior to entering into this Agreement.
- 7.4 The parties acknowledge that damages may be an inadequate remedy for breach of this clause 7 and that a party may obtain injunctive relief against the other for any breach of this clause 7.
- 7.5 The obligations accepted under this clause 7 survive termination or expiry of this Agreement.

## **8. Termination of Services**

- 8.1 EAA may terminate this Agreement by notice in writing to the Client:
- (a) if the Client fails to perform any condition of this Agreement and fails to rectify this breach to the satisfaction of EAA following the expiration of 7 days notice of the breach being given by EAA to the Client; or
  - (b) if in EAA's opinion, the Services (including any Variation) are completed.
- 8.2 The Client may terminate this Agreement by notice in writing to EAA if EAA fails to perform any condition of this Agreement and fails to rectify this breach to the satisfaction of the Client following the expiration of 7 days notice of the breach being given by the Client to EAA.
- 8.3 EAA or the Client may terminate this Agreement upon the happening of any of the following events, namely:
- (a) the giving of at least 30 days written notice by one party to the other party of the intention to terminate this Agreement;
  - (b) if the other party enters into any insolvent administration pursuant to the Corporations Act 2001 (Cth) or the Bankruptcy Act 1966 (Cth);
  - (c) if the Client is a natural person and they die or otherwise become incapable of performing this Agreement.
- 8.4 Upon termination of this Agreement any fees, expenses or reimbursements payable by the Client to EAA in respect of any period prior to the date of termination must be paid by the Client within 7 days after the date of termination.
- 8.5 Termination of this Agreement does not affect any rights accruing to each party up to the date of termination of this Agreement.

## **9. Retention of Files and Recovery of Archived Documents**

- 9.1 EAA will retain any documents or files in its possession relating to the Services for a period of 7 years from the date this Agreement is terminated. The Client agrees that after 7 years EAA has authority to destroy the documents or files unless otherwise agreed in writing or where a longer statutory holding period is mandatory.
- 9.2 EAA will archive project documentation 12 months after the completion of the project. Clients seeking a copy of archived documents will be charged a fee based on time taken to recover the documents and any materials used (e.g. printing and binding).

## **10. Retention of Samples**

- 10.1 EAA will retain any samples relating to the Services for a period of 2 weeks from the date they are obtained or received by EAA unless otherwise agreed in writing.

## **11. Underground Services Location**

- 11.1 EAA agrees to take all reasonable care in locating and marking the location of Underground Services;
- 11.2 EAA may engage technicians to locate underground services. Service locators cannot locate certain types of lines. Some uncertainty exists with the absolute location of those services which are found. It is thus quite possible that the location of some services is quite unknown. EAA will undertake the location of services, with its contractors, in a diligent manner. Neither EAA nor its contractor will accept responsibility for damage to any service or consequential losses.
- 11.3 The Client will assist EAA in determining the location and position of any concealed pipes, cables, and the Client can then choose to accept and use the advice if they so wish.
- 11.4 The Client must accept that due to site conditions and the limitations of the instruments used, the instruments will on occasions give no indication of the presence of underground utilities (service) including cables or pipes actually existing.
- 11.5 If any work or other activity is to be conducted in the vicinity of any underground service or any other location marked by EAA or its contractor, the Client must visually establish the presence or absence (as the case may be) of any relevant underground service by hand excavation or by the use of hand augers (pot holing) prior to the commencement of that work or activity.
- 11.6 The client releases and must indemnify EAA and its contractor from and against any loss, liability or expense suffered or incurred by EAA in connection with the Client's failure to comply with clause 11.5.
- 11.7 Emergency location of services and repair works to underground services undertaken by EAA for the Client are payable by the Client.

## **12. Dispute Resolution**

- 12.1 In the event of a dispute between the parties regarding this Agreement, the performance of the Services or fees, then the parties agree to communicate with each other in good faith with a view to resolving the dispute by negotiation.

## **13. General**

- 13.1 Nothing in this Agreement constitutes the relationship of a partnership, joint venture or employer and employee between EAA and the Client and it is the express intention of the parties that any such relationships are denied.
- 13.2 This Agreement may not be changed or modified in any way except in writing signed by or on behalf of all the parties.
- 13.3 No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 13.4 If any provision of this Agreement is held to be invalid or unenforceable for any reason, it will be severable and will not affect the remaining provisions of this Agreement.
- 13.5 This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.