

**Standard Terms and Conditions for Provision of Consulting Services – LC Team Pty. Ltd. trading as LC Energy****1. DEFINITIONS**

- 1.1 These Standard Terms and Conditions of Business ("Conditions") are to be read in conjunction with and form an attachment to LC Energy ("LC") proposal or agreement ("Proposal") for provision of consulting services ("Services"). On acceptance of the Proposal, the Client ("Client") becomes bound by the Conditions set out below with respect to the Proposal.

**2. RESPONSIBILITIES AND OBLIGATIONS OF LC**

LC shall:

- 2.1 use its best efforts to complete the Services in accordance with the Proposal as far as it is in LC's control to do so;
- 2.2 exercise the degree of skill, care and diligence normally exercised by members of the relevant profession performing services of a similar nature and in accordance with the code of ethics of the institution body which governs the profession;
- 2.3 remain fully responsible for all Services provided by LC irrespective of any review or acceptance of those Services by the Client;
- 2.4 produce any reports and/or recommendations pursuant to this Agreement for the sole use of the Client and LC undertakes no duty to nor accepts any responsibility to any third party who may rely upon such report or recommendation.

**3. RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT**

The Client shall:

- 3.1 give to LC in writing timely directions, instructions, decisions and information sufficient to define the Services required, or any variation thereof, and facilitate the provision of the Services by LC. This shall include obtaining all approvals, authorities, licences and permits by the Client which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services unless otherwise specifically included in the Services;
- 3.2 as soon as practicable or within time frames nominated by LC, answer queries made by LC relating to the Clients' requirements in connection with the Proposal and provide LC with all such information which is reasonably necessary to enable LC to comply with its obligations;
- 3.3 not interfere with LC's performance of the Services;
- 3.4 as soon as practicable make arrangements to enable LC to enter upon any relevant site and associated lands as necessary to enable the performance of all the Services;
- 3.5 if the Client becomes aware of any matter which may change the scope or program of the Services, promptly give written notice to LC.

**4. CHARGES AND PAYMENT**

- 4.1 An estimate of the charges and related expenses of LC is provided in the Proposal attached and will remain valid for one (1) month from the date of the Proposal.
- 4.2 Unless otherwise stated in the Proposal, the Proposal shall not be construed as an offer to perform the Assignment within a fixed time or at a fixed price.
- 4.3 The Company charges are based on an hourly rate for consultant time plus materials and disbursements.
- 4.4 The Company may agree to perform certain work for a fixed price in accordance with an agreed specification. In this case, the specification is binding and additional or previously unspecified work will be added to the Client's account. A 10% commitment fee is required prior to commencement, with progress payments as agreed during the course of the assignment and the balance payable upon completion of work.
- 4.5 No charge shall be made for travelling time by the consultant unless it exceeds by a material amount the staff member's normal travelling time between home and LC's office. Expenses directly associated with the Assignment, including travel, meals and accommodation (acceptable to LC) for LC staff, materials and equipment costs and appropriate costs for the administrative assistance are payable by the Client. Should the need arise during the Assignment for ancillary services not specified in the Proposal, their provision shall be subject to agreement before expenditure is incurred.
- 4.6 All expenses shall be marked up at 10% above cost unless otherwise agreed in the proposal.
- 4.7 All charges shall be exclusive of GST and other government taxes and levies, which are properly due whether they are imposed or brought into effect before or after the Client has accepted the Proposal.
- 4.8 Unless an alternative payment schedule is set out in the Proposal or is otherwise agreed, LC shall invoice the Client on a fortnightly basis with those invoices being payable within seven days of the date of invoice.

- 4.9 If payment is not made by the due date LC shall be entitled (without prejudice to any other right or remedy available to it) to charge interest on the outstanding amount at a rate of 1.5% per month.
- 4.10 Failure to comply with payment in accordance with the Conditions may invalidate any warranty by LC.
- 4.11 If the Proposal links payment to milestones or project stages, LC shall be entitled to payment on completion of each milestone or stage and shall further be entitled to payment if failure to complete the milestone or stage by the due date has been due to delays or problems by the Client or a third party outside LC's control.
- 4.12 In the event that any part of any invoice is disputed, the amount not under question shall be paid promptly in accordance with the appropriate payment terms and notification of the grounds for dispute provided in writing to LC within seven days.
- 4.13 LC reserves the right to adjust the hourly charge rates for all employees from 1 July each year, after providing written notice to the Client of the adjusted rates. Any decision not to apply such rate adjustments is at LC's sole discretion, unless otherwise noted in the Proposal.
- 4.14 The Company will endeavour to meet agreed deadlines however these are not guaranteed and are estimates only. No penalties or reduction in payment to LC will be applicable unless specifically agreed in writing.

## **5. ASSIGNMENT AND ENGAGEMENT OF SUBCONTRACTORS**

- 5.1 Neither the Client nor LC may assign its interest in this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 5.2 LC may engage any other party or person it may determine to be suitably capable and qualified as sub-contractors to undertake the Services, subject to the Client's prior written approval. Such approval shall not be unreasonably withheld. If no written approval is provided within seven days of a written request for approval, approval will be deemed to be provided.
- 5.3 Any such assignment or subcontracting shall not release or discharge the assignor from any obligations under the Agreement.

## **6. LICENCES OF SOFTWARE/LIBRARY CODE**

- 6.1 If, in addition to the provision of consulting services as defined in the Proposal, the Proposal and Assignment includes the licensing by LC to the Client of new or existing standard software and library code held by LC, the Client acknowledges that with respect to such licences an extra fee or royalty shall be payable on terms as shall be agreed.
- 6.2 The Client as licensee agrees and undertakes:
- 6.2.1 Not to copy, reproduce, translate, adapt, vary, reverse-engineer, decompile, disassemble, reassemble or modify the software nor communicate it to any third party without LC's prior written consent; and
- 6.2.2 Not to make the software available (including programme listings, object and source programme listings, object code and source code) in any form to any third party without the prior written consent of LC; and
- 6.2.3 Not to permit any unauthorised third party to examine, repair or in any way alter the software without the prior written consent of LC.
- 6.3 With respect to software licensed to the Client by LC, the software and its documentation (including any manual) is provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. LC does not warrant that the functions contained in the software will meet the Client's requirements or that the operation of the software will be uninterrupted or error free. The entire risk as to the quality and performance of the software is with the Client. If the software is defective, the Client will assume the entire cost of all necessary servicing, repair or corrections.
- 6.4 In the event that software under the Proposal is supplied subject to its own "shrink wrap" conditions then those conditions shall apply and in the event of conflict those shrink wrap terms and conditions shall apply.

## **7. DELIVERY OF GOODS**

- 7.1 The risk of any loss or damage to or deterioration in any goods supplied by LC during the Assignment shall pass to the Client and be borne by it immediately upon delivery to the Client or delivery to a carrier for delivery to the Client.
- 7.2 The Client shall be responsible for insurance of the goods from the time of delivery.
- 7.3 Notwithstanding delivery, property in the goods shall not pass to the Client until all sums due or owing on any account whatsoever by the Client has been received by LC in cash or cleared funds. Until property in the goods passes the Client shall:
- 7.3.1 Keep the goods free from any charge, lien, or other encumbrance and
- 7.3.2 Hold the goods on a fiduciary basis as bailee for LC.
- 7.4 In the event of non-payment by the due date, the Client hereby irrevocably licences LC, its agents and servants with or without notice to enter in and into premises occupied by the Client to search for and remove any of the goods supplied

without in any way being liable to the Client or any person claiming through the Client with respect to any damage caused by such entry and to re-sell the goods and shall be released from all obligations under the contract.

## **8. OWNERSHIP OF INTELLECTUAL PROPERTY**

- 8.1 Any copyright or other intellectual property rights, software, products or goods or devices developed or any documentation prepared for the Client by LC in the course of performing the Assignment shall become the absolute property of the Client when full payment for services has been received unless otherwise stated in the Proposal or agreed in writing.
- 8.2 Where LC uses its own intellectual property to complete the Proposal, this background intellectual property remains the property of LC, and a non-exclusive licence is provided to the Client for the purpose of this Proposal.
- 8.3 With respect to intellectual property retained by LC pursuant to Clause 6.1 above, LC subject to payment in full of all sums owing hereby grants the Client an irrevocable non-exclusive licence to use the intellectual property developed as a result of the Assignment without further fee or royalty, unless otherwise stated in the Proposal.

## **9. EXCLUSION OF WARRANTIES AND LIABILITY OF LC**

- 9.1 LC, directors, officers or staff shall not be liable to the Client (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply services as set out in the Proposal.
- 9.2 If, notwithstanding 9.1, LC, its directors, officers or staff are found to be liable to the Client in any circumstances then the maximum combined amount such person shall be liable for to the Client under any contract or contracts is an amount equal to the lesser of:
- 9.2.1 Contract price of the consultancy service provided pursuant to the Proposal; or
- 9.2.2 The actual loss or damage suffered. Where the actual loss or damage is incurred across more than one unit, liability will be limited to the actual loss or damage suffered on the first unit only, unless the contract for the consultancy service specifically notes that the service is to be applied across more than one unit.

## **10. ALTERATIONS TO SCOPE & SPECIFICATIONS**

- 10.1 If the Client wishes to alter the scope or specifications developed and agreed pursuant to the Proposal, the Client shall make a written request to LC for such alteration or amendment to be made and the alteration and amendment shall not form part of the Proposal and Assignment until agreed to in writing by both parties.
- 10.2 The Client shall be responsible for all extra charges and time incurred by LC as a result of the change to the specifications.
- 10.2.1 If LC becomes aware of circumstances which differ from those disclosed by the Client prior to acceptance of the proposal or those set out in the Proposal ("unforeseen circumstances") LC must promptly notify the Client and cease performance of the Proposal.
- 10.2.2 If the effect of the unforeseen circumstances is to increase the cost of performance of the Proposal, then LC is to ask for a variation.
- 10.2.3 If the Client does not agree to the variation within seven days, LC may either suspend the performance of the Proposal or terminate the Proposal.

## **11. SITE ACCESS AND SERVICES**

- 11.1 The Client must ensure that LC's employees are given such facilities, services and accessories as LC requires enabling LC to comply with its obligations under the Proposal and these Conditions.
- 11.2 The Client shall be responsible to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the health and safety of LC staff working or visiting the Client's premises.
- 11.3 Where additional hours or expenses are incurred by LC in gaining site access due to conditions imposed by the Client outside those agreed in the Proposal, including but not limited to: additional inductions; travel expenses that can't be cancelled without expense; changes in availability of site equipment, personnel or testing conditions; changes in other site conditions necessary for the completion of the work described in the Proposal; LC will notify the Client in writing of the additional costs, and the Client will be liable for the additional hours and expenses as additions to the Proposal.

## **12. INDEMNITY**

- 12.1 The Client shall keep LC indemnified against all costs, claims, demands, expenses and liabilities of any nature whatsoever, including without limiting the generality of the foregoing, claims for death, personal injury, damage to property and the consequence of loss, (including loss of profits) which may be made against the company or which the company may sustain, pay or incur as a result of or in connection with the assignment unless such cost, claim, demand, expense or liability, shall be directly and solely attributed to the negligence of LC or its agents.

## **13. SUSPENSION AND TERMINATION OF THE AGREEMENT**

**13.1 Suspension and Recommencement**

- 13.1.1 Either party may, at any time by written notice to the other party, suspend the provision of all or any part of the Services, if the other party is in breach of this Agreement or due to conditions beyond their control. This includes but is not limited to failure to make payments, provide timely information, and failure to provide reports.
- 13.1.2 LC shall be paid all reasonable fees, extra costs and expenses, due to any suspension or recommencement.

**13.2 Termination**

- 13.2.1 This Agreement may be terminated at any time by either party if the other party is in breach of the Agreement and if the other party fails to rectify the breach within seven days of receipt of notice in writing from the first party.
- 13.2.2 Where the financial position of either party materially changes or where either party undergoes a change in its structure which, in the reasonable opinion of the other party, limits the capacity of the first party to perform or precludes the first party from meeting its obligations under the Agreement, the other party may terminate the Agreement.
- 13.2.3 LC has the right to terminate this Agreement if LC is advised in writing to provide Services that, in its opinion, will reduce either the safety, functionality or durability of the Proposal works to standards less than normally accepted in similar works. Termination under the above circumstances will not constitute breach or default by LC and the Client accepts it has no claim against LC for any consequential costs or damages arising from such termination of this Agreement.
- 13.2.4 Termination shall be without prejudice to any claim either party may have against the other party arising from any breach of the Agreement or any act, default or omission (including negligence) prior to the date of termination.
- 13.2.5 Upon termination, and fee payment pursuant to this Clause, LC shall deliver to the Client a copy of all documents produced by LC up to the date of termination regardless of their stage of completion without any liability in respect of any incomplete documents.
- 13.2.6 If this Agreement is terminated for any reason the Client shall pay to LC a fair and reasonable fee for the Services provided in accordance with the Agreement up to and including the date of termination together with reimbursement for any costs and expenses reasonably incurred by LC in contemplation of its providing the Services. Where the Proposal is for a fixed price, LC will be reimbursed on a fees plus expenses basis for work completed up to the termination, provided this does not exceed the fixed price plus agreed variations.

**14 DISPUTE RESOLUTION**

- 14.1 If the parties fail to resolve a dispute within seven days of written notice from one of the parties detailing the dispute, each party shall, within a further seven days, nominate a senior representative to meet at a mutually convenient location.
- 14.2 If within the seven day period, or other mutually agreed period, the senior representatives are unable to resolve the dispute then the dispute shall be referred to a mediator agreed between the parties. In the event that no agreement on mediator is reached, the mediator shall be selected by the President of the Institution of Engineers Australia in Queensland. The parties shall not be legally represented before the mediator but shall be entitled to legal advice.
- 14.3 If the dispute is not resolved by mediation, the matter shall be referred to arbitration within 60 days of the date of mediation. The parties may be legally represented in any arbitration.
- 14.4 The cost of the mediation shall be shared equally between the parties

**15 RESTRAINTS**

- 15.1 Neither party will solicit for the purposes of employment, employ, or engage the services of a past or current employee of either party, except where
  - 15.1.1 the employee has been employed by neither party for at least six months, or
  - 15.1.2 six months has passed after the termination of this Agreement, or
  - 15.1.3 both parties agree in writing.
- 15.2 Nothing in the agreement for the provision of consultancy services the subject of the Proposal will prevent LC from providing identical or similar services for persons other than the Client.

**16 MISCELLANEOUS**

- 16.1 These Conditions in conjunction with the Proposal represent the entire agreement between the parties and all other representations, warranties, or promises whether verbal or written are hereby expressly excluded.
- 16.2 These Conditions shall apply to the Proposal and shall prevail over any conflicting conditions presented by the Client, unless expressly acknowledged by LC in writing.
- 16.3 Unless otherwise stated in the Proposal, as a specific change to these conditions, in the event of conflict between these Conditions and the Proposal then these Conditions shall prevail.

- 16.4 The contents of the Proposal, these Conditions and any information exchanged between the parties as a result of the Proposal and these conditions, shall remain confidential between the parties, but the duty of confidence shall not extend to disclosure of the placement of the contract itself and its nature, or to any information already known to the recipient prior to disclosure, or lawfully received by the recipient from a third party, nor to information published at the date of such disclosure or subsequently through no fault of the recipient.
- 16.5 Neither party shall be in breach of these conditions if its breach is caused by an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw materials, energy or supplies, labour disputes of whatever nature and any other reason beyond the control of either party. If either party is unable to perform its duties and obligations under the proposal and these conditions as a direct result of any such reasons that party must give immediate written notice to the other of such inability stating the reasons.
- 16.6 The Conditions and Proposal shall be governed by the Law of Queensland and the parties agree to submit to the jurisdiction of the Queensland Courts.
- 16.7 If any condition or part of any condition is held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provision of these terms and conditions and any related agreement will remain in full force and effect.