



Terms & Conditions for Services

ICS INDUSTRIES PTY LTD
ABN 14 125 123 757

TERMS & CONDITIONS FOR SERVICES

These terms and conditions ("**Terms**") apply to all services and works provided by **ICS Industries Pty Ltd ("ICS")** to the **Customer** referred to in the written quotation issued by ICS (the "**Quotation**").

1 GENERAL

- 1.1 These Terms and the Quotation set out the entire agreement between ICS and the Customer in relation to ICS providing services and works as agreed by ICS from time to time (the "Works"). Any terms or conditions that are contained in any purchase order or in any other document that is issued by the Customer or in correspondence or documents passing between ICS and the Customer:
- (a) have no effect, and will not affect any agreement between ICS and the Customer pursuant to these Terms and the Quotation, even if ICS has had notice of those terms or conditions; and
 - (b) do not constitute an offer or a counter-offer by the Customer.
- 1.2 By ordering Works, or executing an Application for Credit or other financial accommodation with ICS, the Customer is deemed to have accepted the terms and conditions set out in these Terms and the Quotation, and to have agreed that they apply to the exclusion of all others.

2 QUOTATIONS AND ORDERING

- 2.1 If requested to do so by the Customer, ICS may issue a Quotation in respect of any Works proposed to be provided under these Terms. Any Quotation will remain open for acceptance for a maximum of thirty (30) days from the date of issue, or such other time as specified in the Quotation. ICS may withdraw a Quotation at any time.
- 2.2 The Quotation will set out the following details:
- (a) the Customer's name, address, and contact details, as well as the name, position, address and contact details for the Customer's contact person;
 - (b) the nature of the Works to be provided pursuant to that Quotation;
 - (c) the location at which the Works would be performed;
 - (d) any specifications for the relevant Works;
 - (e) the time frame within which the Works would be supplied;
 - (f) the price payable for the Works (or a means for calculating them on a time and materials basis);

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- (g) any ancillary equipment or items to be supplied by ICS or by the Customer (specifying whom) and, if ICS is supplying them, the price payable for those items; and
 - (h) any special conditions that would apply to the Works to be provided under the Quotation (“Special Conditions”);
 - (i) the amount (if any) payable by the Customer in advance of the Works commencing (which may be the full amount payable for the Works);
 - (j) such other items as ICS considers relevant for that Quotation.
- 2.3 Once the Customer has accepted the Quotation and paid any amount contemplated by clause 2.2(i), ICS will commence providing the Works in accordance with these Terms and the Quotation. To the extent of an inconsistency between these Terms and a Quotation, the Quotation (including the Special Conditions) prevails.

3 ACCESS, INFORMATION AND COOPERATION

- 3.1 The Customer must, where relevant or where otherwise requested by ICS, provide or make available to ICS:
- (a) any necessary equipment, materials, assistance and personnel);
 - (b) accurate, complete and up-to-date information and documentation about project requirements, access, security procedures and any other matters within the Customer’s knowledge or control that may assist ICS in performing its obligations under these Terms (including copies of plans or drawings in respect of the site at which the Works are undertaken (the “Site”); and
 - (c) a suitably qualified or informed representative of the Customer to advise ICS on the matters referred to in this clause 3.1.

Where the Customer provides any information or documentation to ICS, the Customer must ensure that such information is and at all times remains accurate, complete and up to date.

- 3.2 The Customer must ensure that:
- (a) the Site and any item provided by the Customer complies with all applicable laws and standards relating to health and safety and protection of the environment;
 - (b) all hazards at the Site have been removed or made safe prior to the Works commencing; and
 - (c) any safety procedures relating to the Site have been provided and demonstrated to ICS.
- 3.3 The Customer must prepare the Site, and ensure that ICS has access to the Site, prior to the performance of the Works, at the Customer’s expense. In so doing, the Customer must comply with any directions or specifications issued by ICS.
- 3.4 Without limiting clause 3.3, the Customer must ensure the following at the Site:

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- (a) adequate electric supply;
- (b) adequate electrical and mechanical fittings;
- (c) appropriate siting conditions; and
- (d) such further or other facilities and things as ICS may specify in the Quotation or notify to the Customer in writing.

3.5 The Customer acknowledges that the provision by ICS of Works is dependent on the Customer's compliance with this clause 3.

4 DELAY

If the completion of the Works is delayed for any reason outside ICS's reasonable control (including inadequate preparation of or access to the Site), ICS may charge the Customer for any reasonable costs and expenses ICS incurs as a result of the delay.

5 ALTERATION OF WORKS

ICS may vary the scope of the Works without consultation with the Customer if, in ICS's opinion, the variation is reasonably necessary to complete the Works in accordance with the specifications. If the Customer seeks a variation to the scope of the Works, the Customer will provide reasonable notice and the parties may by agreement agree to such a variation and ICS may adjust the price payable by the Customer accordingly on a time and materials basis.

6 INVOICING AND PAYMENT

- 6.1 The price for the Works shall be as specified by ICS in the Quotation (or calculated on a time and materials basis).
- 6.2 Unless otherwise specified by ICS, all prices specified in a Quotation exclude:
- (a) any tax, including any Goods and Services Tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("GST"), duty or impost levied in respect of the Works (other than any tax assessable on ICS's own income); and
 - (b) costs and charges relating to insurance, transport (by any mode), travel, accommodation, and any other expenses incurred by ICS in carrying out its obligations under the agreement.
- 6.3 Subject to these Terms (including clauses 2.2(i), 6.4 and 6.7), ICS may deliver an invoice to the Customer at the times specified in the Quotation (or if no times are specified in the Quotation, when the Customer accepts the Quotation).

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- 6.4 Payment is due within thirty (30) days of invoice unless ICS otherwise specifies in writing in a Quotation. If ICS does not receive payment by the due date, then without prejudice to its rights under these Terms or generally, ICS may:
- (a) charge the Customer interest on the amount outstanding at the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983 (Vic)* (compounding daily); and/or
 - (b) by written notice to the Customer, suspend the provision of any Works and refer the dates for performance of any Works, whether under a particular Quotation or generally, until after the Customer has paid to ICS:
 - (i) the outstanding amount, interest and any amount payable under clause 6.5; and
 - (ii) if ICS requires it, advance payment for the Works (including any amounts that would become payable to ICS on or after the completion of the Works).
- 6.5 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs on a solicitor/own client basis incurred by ICS in the enforcement of the Customer's obligations and the recovery of monies due from the Customer to ICS.
- 6.6 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in clause 6.5, and then to the principal amount outstanding.
- 6.7 ICS may revoke or withdraw any approval previously given to the Customer to extend credit to the Customer at any time and for any reason.
- 6.8 ICS is entitled to set-off against any money owing to the Customer amounts owed to ICS by the Customer on any account whatsoever.

7 RISK AND TITLE

- 7.1 Until full payment has been made for all Works, and any other sums in any way outstanding from the Customer to ICS from time to time:
- (a) the property in any goods, materials, equipment or parts forming a part of the Works (the "**Goods**") will not pass to the Customer, and the Customer holds the Goods as bailee for ICS (and will return the same to ICS on request); and
 - (b) the Goods will nevertheless be at the risk of the Customer from the time of dispatch.
- 7.2 The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of ICS (provided that there will be no right to bind ICS to any liability to such third party by contract or otherwise). The Customer must hold all payments (direct or indirect) received from such third parties for the Goods (or any portion of them) shall be held on trust for ICS pursuant to the fiduciary relationship.

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8 PPSA

- 8.1 The Customer acknowledges that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in the Goods under these Terms.
- 8.2 The Customer acknowledges that ICS may register the security interest in the Goods on the Personal Property Securities Register.
- 8.3 The Customer agrees to do anything that ICS reasonably requires to ensure that ICS has at all times a continuously perfected security interest over the Goods.
- 8.4 ICS and the Customer agree not to disclose any information of the kind contemplated by section 275(1) of the PPSA and the Customer expressly waives its rights to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to a security interest created under these Terms.
- 8.5 To the extent permissible by law, the Customer and ICS contract out of sections 95, 121(4), 123(2)(a), 129(2), 130(1)(a), 132(4), 135, 142 and 143 of the PPSA.
- 8.6 In this clause, terms used which are defined in the PPSA have the meaning given to those terms in the PPSA.

9 CANCELLATIONS AND CLAIMS

- 9.1 The Customer may not cancel any order for Works or any part of that order without obtaining ICS's prior written consent, and then only on such terms (including as to the payment of an appropriate charge) as ICS may determine. ICS reserves the right to refuse or withhold that consent.

10 CONFIDENTIALITY

Neither party may, without the other party's prior written consent, disclose to any third party or use other than for the purposes of providing or maintaining the Works, any Confidential Information of the other party imparted to or obtained by it during or in connection with these Terms. This obligation of confidence will cease to apply in relation to information that the party is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach of any obligation of confidence by any party.

11 INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights relating to the Works (including any design drawings, plans, software or any documentation) (the "**Intellectual Property**") remains the property of ICS or where applicable its licensors. The Customer will promptly notify ICS of any infringement or threatened infringement of any of ICS's intellectual property rights.

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12 WARRANTIES

- 12.1 ICS warrants that it will perform the Works with due care and skill using appropriately trained and qualified personnel. Any materials or equipment that ICS supplies that are incidental to the Works will be provided subject to, and paid for in accordance with the terms and conditions set out in ICS's Supply Terms & Conditions for over the Counter Items. The Customer shall inspect the Works within 7 days after they have been completed and promptly notify ICS of any material non-compliance with the relevant specifications (as set out in the Quotation) or material defects in workmanship. In that event ICS will rectify the defective or non-compliant works. The Customer agrees to cooperate with ICS to minimise any costs associated with doing so.
- 12.2 Except for the express warranties set out in these Terms and any Special Conditions, to the extent permitted by the law, ICS expressly excludes all conditions and warranties. Where legislation implies any condition or warranty ("**non-excludable term**"), and that legislation avoids or prohibits provisions in a contract excluding, or modifying the application or exercise of or liability under such a non-excludable term, that non-excludable term is deemed to be included in these Terms. However, ICS' liability for any breach of that non-excludable term is limited, at ICS's option, to the supply of equivalent goods or services, or paying the cost of supplying equivalent goods or services.

13 LIABILITY AND INDEMNITY

- 13.1 ICS and its officers, agents, subcontractors, representatives and employees ("**Associates**") are not liable in respect of any indirect, punitive, special, incidental or consequential damage in connection with or arising out of a breach of these Terms or any Quotation (including for loss of profits, loss of production, loss of goodwill or business reputation, loss or damage due to business interruption) which may be suffered or incurred or which may arise in respect of a failure or omission on the part of ICS to comply with its obligations under these Terms or a Quotation.
- 13.2 ICS and its Associates are not liable for breach of any of its obligations, to the extent that the act or omission of that party which would constitute such a breach, or give rise to liability, is caused by an act or omission on the part of the Customer.
- 13.3 ICS's (and its Associates') total liability, if any, arising out of these Terms and any Quotation, shall in no event exceed the total price paid by the Customer for the Works.

14 TERMINATION

- 14.1 ICS may terminate its agreement under these Terms or any Quotation by written notice to the Customer if the Customer:
- (a) breaches any term of these Terms and the breach is not capable of remedy or the Customer does not remedy that breach within fourteen (14) days of written notice by ICS;

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- (b) becomes insolvent, or commits any act of insolvency, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed (an “**Insolvency Event**”);
- (c) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) being a natural person, dies; or
- (e) ceases or threatens to cease conducting its business in the normal manner.

14.2 If ICS gives the Customer a notice under clause 14.1:

- (a) all sums then outstanding will become immediately due and payable to ICS if the Customer suffers an Insolvency Event, or defaults in paying any other sums due to ICS, notwithstanding the provisions of any other clause in these Terms;
- (b) ICS may, in addition to terminating the agreement under these Terms or the Quotation:
 - (i) retain any moneys paid by or on behalf of the Customer;
 - (ii) charge the Customer a reasonable sum for work performed for which ICS has not previously rendered an invoice;
 - (iii) be regarded as discharged from any further obligations under that agreement; and
 - (iv) pursue any additional or alternative remedies provided by law.

15 FORCE MAJEURE

- 15.1 ICS will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under these Terms or a Quotation, if a Force Majeure causes the non-performance or delay, and ICS gives the Customer notice of it. In no event will this provision affect the Customer's obligation to make any payments to ICS.
- 15.2 If a Force Majeure delays or prevents ICS from performing its obligations for a period exceeding sixty (60) days, ICS may immediately terminate the agreement in respect of particular Works by written notice to the Customer.
- 15.3 For the purposes of this clause 15, “**Force Majeure**” means a circumstance beyond ICS’s reasonable control which results in ICS being unable to observe or perform on time an obligation under these Terms or a Quotation. Those circumstances include acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, and strikes.

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16 SUB-CONTRACTS

ICS may engage third parties on a sub-contract or consultancy basis, to provide or to assist in the provision of Works.

17 ENGAGEMENT NOT EXCLUSIVE

ICS is providing Works to the Customer on a non-exclusive basis and may provide services of the same or a similar nature as the Works to any other party, provided that in doing so it does not breach any obligation of confidentiality to the Customer under clause 10.

18 GENERAL PROVISIONS

- 18.1 These Terms and any Quotation are governed by and will be interpreted according to the laws of Victoria, and ICS and the Customer consent and submit to the jurisdiction of the courts of Victoria.
- 18.2 Nothing under these Terms or a Quotation constitutes a relationship of employer and employee, principal and agent, joint venture or partnership between ICS and the Customer.
- 18.3 If any provision of these Terms or a Quotation proves to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason, that provision is deemed omitted without affecting the remaining provisions and the remaining provisions of these Terms and a Quotation shall continue in full force and effect.
- 18.4 Any notice required or contemplated by these Terms or a Quotation is deemed to have been properly given if it is in writing, properly addressed and delivered personally, or mailed postage prepared addressed or by fax to the Customer or ICS at their addresses set out in the Customer's Credit Application, or such other address nominated by a party in writing.
- 18.5 In these Terms and a Quotation, unless the contrary intention appears:
- (a) clause headings are for ease of reference only and are not relevant to interpretation;
 - (b) a reference to a clause number includes a reference to its subclauses;
 - (c) words in the singular include the plural and vice versa;
 - (d) words importing a gender include any other gender;
 - (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
 - (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
 - (g) monetary references are references to Australian currency.