



TERMS & CONDITIONS

BACKGROUND

- A. ALS ERS is engaged in the business of providing services to its Clients including those services mentioned on the purchase order.
B. The Contractor is in the business of providing services including those mentioned on the purchase order.
C. ALS ERS wishes to engage the Contractor to provide Services as part of the services provided by ALS ERS to its Clients.

The parties agree:

1. SERVICES AND OBLIGATIONS

- 1.1 The Contractor will provide Personnel to provide Services to ALS ERS for the Service Fees, on the terms set out in this Agreement.
- 1.2 ALS ERS may request the Contractor to provide Personnel to provide Services as provided for in clause 2, pursuant to a Fee Proposal accepted by a Client. ALS ERS has no obligation to engage the Contractor to perform any work under any Fee Proposal accepted by a Client in the Contractor's region or otherwise.
- 1.3 If a Work Order requires the Services to be provided by Nominated Personnel, then the Services must be provided by or personally supervised and checked by the Nominated Personnel unless ALS ERS consents to other Personnel providing those services.
- 1.4 The Contractor will ensure that the Services are performed:
- (a) applying appropriate expertise and using reasonable care; and
 - (b) in accordance with applicable laws and regulations.
- 1.5 Where a Client has requirements that apply to contractors who enter the Client's work site ("Work Site Requirements"), the Contractor must ensure that the Personnel comply with those Work Site Requirements. If the Contractor considers any Work Site Requirements to be unreasonable, they must notify ALS ERS immediately they become aware of any Work Site Requirements of concern.
- 1.6 The Contractor must ensure that the Personnel are reasonably available to perform Services during the hours of 6:00am to 6:00pm on Business Days. Where the Client requires work to be performed outside those times the Contractor will cause the Personnel to perform those Services at the times required by the Client, where practicable and reasonable to do so. The Contractor will be entitled to charge the loading stated in Item 5 for work done outside those hours and the loading in Item 6 for work required to be performed on public holidays.
- 1.7 Where analytical results from the Services provided to the Client trigger 50% of the National Exposure Standard, additional fees may be allowed for in the Schedule of Rates.

2. WORK ORDERS

- 2.1 ALS ERS may engage the Contractor to provide the Services of the Personnel by delivering to the Contractor: -
- (a) a written request to provide required Personnel and/or Services; or
 - (b) a copy of an accepted Client Fee Proposal with a request to provide the whole or part of the Services stated in that Client Fee Proposal, details of any required variation to the Schedule of Rates and requirements for time frame for completion of work where applicable ("Work Order").
- 2.2 The Contractor may accept or decline any Work Order, but must notify ALS ERS in writing within 24 hours of receiving a Work Order if they wish to decline that Work Order. If the Contractor fails to so decline a Work Order within 24 hours, they shall be deemed to have accepted the Work Order.

3. PERSONNEL

- 3.1 The Contractor shall ensure that the Personnel:
- (a) have all requisite qualifications, skills and training;
 - (b) act professionally and courteously in all dealings with the Contractor and its Clients, officers, employees and contractors; and
 - (c) comply with this Agreement and the relevant policies of ALS ERS including those relating to safety.
- 3.2 The Contractor will obtain the written approval of ALS ERS prior to the engagement of additional individuals as Personnel to provide the Services. The Contractor must provide any reasonable information requested by ALS ERS about the proposed personnel in connection with their being approved as Personnel to perform the Services.
- 3.3 ALS ERS reserves the right to direct the Contractor to cease providing the services of any particular Personnel and replace them with other Personnel within seven (7) days of the direction being given by ALS ERS, or immediately in the event of the misconduct of the Personnel.
- 3.4 The Contractor shall, as may be reasonably required by ALS ERS, provide in writing to ALS ERS evidence satisfactory to ALS ERS that the Contractor and Personnel hold the qualifications, skills and training required to provide the Services.
- 3.5 In the event that any of the details referred to in the preceding sub-clause change the Contractor shall forthwith notify ALS ERS in writing.

4. PAYMENT

- 4.1 The Contractor will render invoices to ALS ERS monthly for Services provided to ALS ERS for each calendar month. The Contractor must provide with each invoice an itemised schedule of Services provided including the names of the Personnel who have provided the Services. Where payment for the Services is calculated according to time spent, details of the time spent each day on each separately identifiable Service by each Personnel must be provided.
- 4.2 ALS ERS will pay the Contractor the Service Fees for the Services provided by the Personnel according to the rates set out in the Schedule of Rates as varied by the relevant Work Order and in accordance with the Payment Terms.
- 4.3 ALS ERS may deduct from payment due to the Contractor any costs incurred by ALS ERS for Rectification Works not properly undertaken by the Contractor as reasonably assessed by the Supervisor.

5. CONTRACTOR'S OTHER OBLIGATIONS

- 5.1 The Contractor will complete the tasks specified in Work Orders from time to time within the reasonable time frames and to the standards from time to time specified by ALS ERS.
- 5.2 Whilst the Contractor is engaged by ALS ERS under this Agreement, the Contractor must ensure that the provision of Services to or for any other person or entity by the Contractor or the Personnel do not interfere with the provision of Services by ALS ERS to the Client.
- 5.3 In undertaking the Services, the Personnel must not disrupt the operations of the Client or of the Clients' other contractors.
- 5.4 Whilst this Agreement continues and for a period of 6 months following any termination of this Agreement, the Contractor must not, and must ensure the Personnel do not, without the prior written agreement of ALS ERS, provide any services in the nature of the Services to any Client.

6. DEFECTIVE WORKS

- 6.1 Where any work performed by the Contractor, as part of the Services, is defective, ALS ERS may provide to the Contractor a written notice that sets out: -
- (a) details of the defect in the work sufficient to allow the Contractor to understand the nature of the defect; and
 - (b) a reasonable time stated in the notice in which to rectify the defect.
- ("Defect Notice").
- 6.2 The Contractor must within 24 hours of receiving a Defect Notice, notify the Contractor of the steps the Contractor will take to investigate the defect and attend to the Rectification Works ("Defect Response"). The Contractor must keep ALS ERS informed of the progress of Rectification Works and immediately respond to any information request issued by ALS ERS concerning the progress of Rectification Works.
- 6.3 If the Contractor fails to: -
- (a) accept responsibility for the defects set out in a Defect Notice;





ALS ERS PTY LTD
ABN: 82 163 772 478

Unit 34 / 53-57 Link Drive, YATALA, QLD 4207
Enquiries: accounts.ERSAU@alsglobal.com

- (b) give a Defect Response within the time stated in clause 6.2 or promptly provide information requested by ALS ERS under clause 6.2;
- (c) commence or progress Rectification Works within a reasonable time determined by the Supervisor; or
- (d) otherwise complete the Rectification Works as required by a Defect Notice,

then ALS ERS may undertake the Rectification Works itself and recover from the Contractor the costs of undertaking such Rectification Works as assessed by the Supervisor, together with any consequential damages suffered by ALS ERS as a result of the defective works. The rights of ALS ERS under this clause are in addition to its rights under clause 10.

7. EXPENSES

7.1 The Contractor will provide the Services at its own cost, and unless expressly authorised by ALS ERS, will not be entitled to be reimbursed for any out of pocket expenses incurred by the Contractor and/or the Personnel in connection with the provision of the Services and will be solely responsible for and solely bear:

- (a) the cost of payment to the Contractor's employees, contractors and agents including the Personnel, of remuneration benefits including salaries and wages, annual leave, sick leave, superannuation, long service leave and all other benefits to which any of them may be entitled under any contract of service, or contract for service with the Contractor or under any award, industrial instrument, statute or common law;
- (b) the payment or taxes and duties in respect of such remuneration and benefit; and
- (c) compliance with, and costs of compliance with, all other statutory, award, or other legal or contractual requirements with respect to the Contractor's employees or agents.

8. NATURE OF RELATIONSHIP

8.1 The Contractor is engaged by ALS ERS as an independent contractor;

8.2 Neither this Agreement nor the performance of the Services will create any relationship of employer or employee, partnership or joint venture between ALS ERS and the Contractor;

8.3 Neither the Contractor or any of its Personnel will represent, imply or hold out to any third party that it or they are employees, servants or agents of ALS ERS and without limiting such obligation, neither the Contractor nor any Personnel will be entitled to bind ALS ERS in any way.

8.4 The Contractor and the Personnel have no authority to incur, and will not incur, any obligation on behalf of ALS ERS except with the prior written approval of ALS ERS.

8.5 Subject to the terms of this Agreement, the parties acknowledge that the Contractor is solely responsible for controlling the manner in which the Contractor and the Personnel provide the Services.

9. INDEMNITY & WAIVER

9.1 The Contractor shall be liable for and shall indemnify ALS ERS (including ALS ERS's related bodies corporate, if any), its directors, officers, employees, servants and agents against any:

- (a) loss or damage suffered by any of them in the course of performing the Services;
- (b) liability, claim, suit, action or proceeding whatsoever against ALS ERS in respect of personal injury (including illness) or death or loss or damage to property;
- (c) liability, claim, suit, action or proceeding whatsoever under statute or common law in respect of personal injury (which expression shall include illness) or death of any and all persons employed by the Client or any contractors engaged by the Client; and
- (d) any costs or expenses ALS ERS may incur in respect of such loss, damage, claim, suit, action or proceeding or liability, including legal costs on a full indemnity basis arising out of, in connection with or as a consequence of the actions or omissions of the Client, where such loss or damage is caused directly or indirectly, or is contributed to as a result of any breach of this Agreement by the Contractor, or otherwise by any act or omission by the Contractor, its servants, agents or contractors.

9.2 Where an act or omission of ALS ERS has contributed to the loss, damage, injury or death, then the Contractor's liability to indemnify ALS ERS shall be reduced proportionally to the extent of that contribution.

9.3 The Contractor and the Personnel undertake the Services at their own risk. The Contractor acknowledges that the conditions under which the Services are performed are not within the control of ALS ERS and are the responsibility of the Client and not of ALS ERS.

9.4 To the extent permissible at law, the Contractor releases, discharges, waives and forever holds harmless ALS ERS from all claims for any loss sustained by the Contractor or the Personnel arising as a result of the provision of the Services, other than for payment for those Services under this Agreement, whether caused by or contributed to by ALS ERS's negligence or wilful act or omission, breach of contract, breach of statutory duty or otherwise in connection with the issue of a Work Order or the performance of the Services. Where despite this clause ALS ERS has any liability to the Contractor, then to the extent permissible at law, the damages ALS ERS shall be liable for shall be limited to payment for the relevant Services. ALS ERS shall not in any circumstance be liable for any loss or damage to the Contractor in the nature of economic loss or consequential damages.

10. TERMINATION

10.1 ALS ERS may at any time by notice in writing to the Contractor terminate this Agreement without cause.

10.2 Where ALS ERS terminates this Agreement under this clause:

- (a) the Contractor shall immediately cause the Personnel to cease any work being then undertaken by them and to leave the relevant site;
- (b) the Contractor shall forthwith make a Payment Claim to ALS ERS; and
- (c) ALS ERS will pay for all Services provided up to the time of giving notice of termination (and where applicable any hire costs for plant hired for use in providing Services under a Work Order that cannot be refunded), but shall not be responsible for any loss of profit for the remainder of any work contemplated by any Work Order accepted by the Contractor or any other costs or damages in the nature of demobilisation costs.

11. INSURANCE

11.1 Before providing the Services, the Contractor must take out:

- (a) public liability insurance to cover liability to third parties for loss or damage to property and death or injury to any person;
- (b) professional indemnity insurance; and
- (c) workers' compensation insurance in respect of the Personnel and any other workers of the Contractor.

11.2 Each policy must be maintained during the term of this Agreement and, if requested by ALS ERS, the Contractor must provide ALS ERS with a copy of the relevant certificate of currency.

12. CONFIDENTIAL INFORMATION

12.1 The Contractor acknowledges that it may become acquainted with or have access to Confidential Information, and agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company.

12.2 The Contractor agrees not to use the Confidential Information for any purpose other than for the benefit of ALS ERS during or after the Contractor's engagement with ALS ERS.

12.3 The Contractor shall not remove the Confidential Information from the custody or control of ALS ERS without the written consent of ALS ERS.

12.4 The Contractor shall not for any reason, either for the Contractor or any third party, appropriate, copy, memorise or in any manner reproduce or reverse engineer any of the Confidential Information.

12.5 Nothing in this Agreement shall impose an obligation on the Contractor with respect to maintaining confidence regarding any portion of the Confidential Information which is:

- (a) generally known or available by publication, commercial use or otherwise; or
- (b) is already known by the Contractor at the time of disclosure.

13. GOODS AND SERVICES TAX

13.1 Unless expressly included, the consideration expressed to be payable under any other clause of, or Schedule to, this Agreement for any supply made under or in connection with this Agreement does not include GST.

13.2 To the extent that any supply made under or in connection with this Agreement is a taxable supply by one party to this Agreement to another such party, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply.



Quality
ISO 9001
SAI GLOBAL

Asbestos | HAZMAT | Environmental | Occupational Hygiene



- 13.3 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Agreement.
- 13.4 If a payment to a party under this Agreement is a payment by the other party by way of reimbursement or indemnity that is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before the payment is increased for GST pursuant to clause 13.2.
- 14. GENERAL PROVISIONS**
- 14.1 Binding on successors**
This Agreement shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.
- 14.2 Governing law**
- (a) This Agreement is governed by the laws of the State in which the services are performed and the law of the Commonwealth of Australia which are in force in that State.
- (b) The parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 14.3 Entire understanding**
- (a) This Agreement contains the entire understanding and agreement between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect.
- (c) No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
- 14.4 Waiver**
No waiver by a party of a provision of this Agreement is binding unless made in writing.
- 14.5 Severance**
If a provision of this Agreement is void or unenforceable it must be severed from this Agreement and the provisions that are not void or unenforceable are unaffected by the severance.
- 14.6 Cumulative rights**
The rights and remedies of a party to this Agreement are in addition to the rights or remedies conferred on the party at law or in equity.
- 14.7 Contra proferentem**
The *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 14.8 Dispute resolution**
- (a) If a dispute arises in connection with this Agreement, then a party may only deal with that dispute in the manner set out in this clause.
- (b) A party to a dispute which arises in connection with this Agreement may give to the other party or parties to the dispute a notice specifying the dispute and requiring its resolution under this clause.
- (c) Within 14 days after a notice is given under clause 14.8(b) (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute in good faith.
- (d) If despite the parties' best efforts, a dispute is not resolved within 14 days after notice a party may by notice to the other party or parties to the dispute refer the dispute for mediation in accordance with the Mediation Rules of the Institute of Arbitrators and Mediators Australia. The mediation will be conducted by a mediator to be appointed by agreement of the parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a party.
- (e) If the dispute is not resolved within 28 days after the appointment of the mediator any party may take legal proceedings to resolve the dispute.
- (f) The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.
- 15. DEFINITIONS AND INTERPRETATION**
- 15.1 Definitions**
In this Agreement, unless inconsistent with the context or subject matter:
- (a) **"Agreement"** means this document and all schedules attached to this document;
- (b) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (c) **"Client"** means a client of ALS ERS;
- (d) **"Confidential Information"** means information relating directly or indirectly to ALS ERS, its assets and the operation and affairs of ALS ERS including, but not limited to, performance of the Services and trade secrets, marketing information, customer lists, financial information and business plans whether or not in some tangible form (and where recorded in some tangible form, whether the record is an original or a copy of or extract from the original or another copy or extract);
- (e) **"Fee Proposal"** means a fee proposal that ALS ERS has provided to a Client that includes work to be included in a Work Order;
- (f) **"GST"** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (g) **"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (h) **"GST Law"** means GST Law as that term is defined in the GST Act;
- (i) **"Nominated Personnel"** means Personnel ALS ERS nominates to undertake Services outlined in a Work Order;
- (j) **"Parties"** means ALS ERS and the Contractor;
- (k) **"Payment Claim"** means a claim for payment in the form from time to time reasonably required by ALS ERS;
- (l) **"Payment Terms"** means the payment terms mentioned on the purchase order;
- (m) **"Personnel"** personnel employed by the Contractor who are approved for providing Services in accordance with clause 3;
- (n) **"Rectification Works"** means work required to rectify any work undertaken by the Contractor or the Personnel that is defective;
- (o) **"Services"** means the services to be provided by the Contractor as listed in the purchase order;
- (p) **"Service Fees"** means fees payable for the Services as provided for in clause 4;
- (q) **"Schedule of Rates"** means the schedule of rates of payment for the Personnel attached hereto or otherwise agreed from time to time in writing between ALS ERS and the Contractor;
- (r) **"Supervisor"** means the Supervisor mentioned in the relevant Work Order or otherwise advised to the Contractor by ALS ERS for a particular job; and
- (s) **"Work Order"** means a work order given to the Contractor as described in clause 2.1.
- 15.2 Interpretation**
In this Agreement, unless inconsistent with the context or subject matter:
- (a) a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (b) headings are for reference purposes only and must not be used in interpretation;
- (c) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning; and
- references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax.