

Standard Quotation Terms and Conditions

Terms and Conditions

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement" and this Agreement means and comprises of the terms and conditions of this Agreement which includes the presentation of the quotation form, the Client's acceptance of/approval to proceed with the Services or the Client's purchase order in response to the quotation of acceptance/approval to proceed with the Services and excludes Client's terms of business which may be specified in writing in the Client's Purchase Order) which constitutes the Client's acceptance of the quotation and the terms & conditions of this Agreement;

"Curtin" means Curtin University of Technology and includes its officers, employees, agents and sub-contractors;

"Client" means the recipient of the Services;

"Commencement Date" is the date specified in the quotation or the most practical date for commencement of the Services;

"Confidential Information" means:

- (a) information revealed in confidence by Client or Curtin of either to the other of them;
- (b) information designated as confidential by Client or Curtin or of either;
- (c) proprietary information including but not limited to trade secrets and proprietary know how of Client or Curtin or of either;
- (d) information in or relating to the business of Client or Curtin;
- (e) any other information relating to Client or Curtin or of either classifiable in equity as confidential information;
- (f) subject to the above, includes but shall not be limited to the following sources of information: source codes, object codes, manufacturing methods, processes, techniques, products, engineering methods, programs and program developments, program listings including microfiche and associated manuals, user manuals, programming manuals, modification manuals, flow charts, drawings, models, drafts, diagrams, methods of operation, marketing studies, marketing plans, customer lists and customers; and
- (g) extends to all forms of storage or representation of the information referred to above including but not limited to loose notes, diaries, memoranda, drawings, photographs, electronic storage and computer printouts and excludes information which:
 - (i) is or becomes part of the public domain otherwise than as a result of unauthorised disclosure by the recipient;
 - (ii) has been independently acquired by the recipient;
 - (iii) becomes available to the recipient from a source other than the disclosing party and who has not obtained it directly from the disclosing party; or
 - (iv) is required to be disclosed by law.

"Consultant" means any person who takes part in the provision of the Services by Curtin whether as an officer, employee, agent or sub-contractor of Curtin or of any body corporate engaged by Curtin;

"Intellectual Property Rights" means all but is not limited to copyright, patents, trade marks, designs, inventions, trade secrets, ideas, know how, concepts and techniques and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, 1963;

"New Technology" means any procedures, methods, designs, formulations inventions or improvements that are conceived, instigated, made invented or suggested by the parties at any time during the term of this Agreement or within two years thereafter if connected with or arising out of the provision of the Services or with Confidential Information acquired in providing the Services.

"Nominated Consultant" means the person, if any, specified in the quotation as being primarily liable for the provision of the Services;

"Parties" means the Client and Curtin;

"Services" means the services and/or supply of any report to be provided by Curtin as specified in the quotation or as otherwise mutually agreed between the Parties from time to time

"Term" means the period that Curtin is to provide the Services under this Agreement as specified in the quotation.

2. INTERPRETATION

In this Agreement, unless the contrary intent appears:

- (a) a reference to a legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- (b) a reference to the singular include the plural and vice-versa;
- (c) a reference to a "person" includes an individual, a body corporate, a trust, an agency and other body;
- (d) a reference to the Consultant includes a reference to its executors, administrators, successors and assigns;

- (e) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.

3. SERVICES

- 3.1 Curtin shall provide the Services to the Client in a professional manner. If a Nominated Consultant is specified in the quotation then the Services shall be provided primarily by the Nominated Consultant or as otherwise agreed in writing between the Parties from time to time.

4. TERM

- 4.1 The Services shall commence on the Commencement Date and shall be provided for the Term.

5. REMUNERATION

- 5.1 The Client shall pay Curtin the fees that are set out in the quotation including GST and where applicable local duties and taxes.
- 5.2 Subject to clause 5.3, the charges specified in this Agreement for the Services are the total charges payable by the Client. No further charges shall be made on account of government levies or charges as any other item of expenditure but the Client shall reimburse Curtin for any agreed out of pocket expenses at cost plus an administration charge.
- 5.3 If any law is introduced, amended or takes effect that has the result of increasing the rate of any taxes (including the goods and services tax), charges, fees or other imposts ("Taxes") levied or assessed in connection with the Services under this Agreement, Curtin may immediately increase the fees chargeable to take into account the net effect of the Taxes.

6. PAYMENT

- 6.1 Payment of fees shall be made within 30 days of completion of the Services or in accordance with a payment schedule specified in the quotation. If the Client defaults in payment of such fees, Curtin reserves the right, without prejudice to any other remedy available to it, to suspend further performance under this Agreement until such payment is made. Curtin may also recover all costs and expenses reasonably incurred in the recovery of any money owing by the Client to it including but not limited to all legal fees, process server's charges and collection agent's expenses.
- 6.2 Until such time as the Client pays Curtin the full price for the Services, the property in any report provided pursuant to the Services shall not pass to the Client and the relationship between the parties shall be a fiduciary one and during that time the Client shall hold the report as bailee for Curtin. In the event of the Client not paying the full price for the Services within the time specified in Clause 6.1 the parties agree that the Client must on demand in writing return any report provided pursuant to the Services to Curtin without delay.

7. LAWFUL DIRECTIONS

- 7.1 In the discharge of its duties Curtin shall comply with all reasonable directions of the Client as may lawfully be given from time to time in relation to the performance of the Services.

8. CONTRACTOR'S STATUS

- 8.1 Each Party enters into this Agreement as an independent contractor. Nothing in this Agreement constitutes or is deemed to constitute a partnership, agency or employment relationship for any purpose. A Party has no power or authority to bind the other Party or to contract in the name of and create a liability against the other Party in any way or for any purpose.

9. LIABILITY OF CURTIN

- 9.1 The Client acknowledges that:
 - (i) it uses the results of the Services and any advice, opinions or information supplied by Curtin or its consultants at its own risk; and,
 - (ii) it is the responsibility of the Client to make its own assessment of the suitability of the Services and any advice or information generated from the Services.
- 9.2 Except as expressly provided to the contrary in this Agreement, all terms, conditions, warranties, undertakings, inducements or representations, whether express, implied, statutory or otherwise relating in any way to the Services or to this Agreement are excluded unless contained as an express term of this Agreement. Without limiting the generality of the preceding sentence, Curtin shall not be under any liability to the Client in respect of any loss or damage (including but not limited to indirect losses, loss of profits, consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the provision of the Services or the failure or omission on the part of Curtin to comply with its obligations under this Agreement.
- 9.3 Where any Act of Parliament implies in this Agreement any term, condition or warranty, and the Act prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in this Agreement.

However, the liability of Curtin for any breach of such term, condition or warranty shall be limited, at the option of Curtin to:

 - (a) refunding the price of the Services, in respect of which the breach occurred; or,
 - (b) providing those Services again.

- 9.4 The Client warrants that it has not relied upon any representation made by Curtin that has not been stated expressly in this Agreement or upon any descriptions contained in any document produced by Curtin.
- 9.5 Any description of the Services in any quotation is given by way of description only and the use of such description shall not constitute a contract of sale by description.
10. CONFIDENTIAL INFORMATION
- 10.1 A Party shall not disclose Confidential Information of the other Party in the course of providing the Services without the prior written consent of the other Party.
- 10.2 A Party will only disclose such Confidential Information to its employees, agents or contractors for the purpose of the provision of Services under this Agreement on a need to know basis and subject to such officers, employees, agents or contractors executing appropriate confidentiality and non-disclosure undertakings.
- 10.3 A Party shall not without the consent of the other Party disclose to any third party that they have entered into this Agreement, or the fact of the provision of the Services by Curtin or a consultant.
- 10.4 The Client has no right to publish any report or part thereof provided by Curtin pursuant to the Services or use Curtin's name without Curtin's prior written consent and subject to such terms and conditions as Curtin considers appropriate.
- 10.5 The confidentiality obligations under this clause 10 shall survive the expiration or termination of this Agreement for a period of two (2) years.
11. INTELLECTUAL PROPERTY RIGHTS
- 11.1 Unless otherwise agreed and specified in writing by the Parties, Curtin shall retain rights to all Intellectual Property Rights relating to New Technology arising out of or in the course of providing the Services, save that the Client shall have the option to enter into a license to use the New Technology on not less favourable terms than Curtin would offer to a third party.
- 11.2 The Client shall at any time at the cost of Curtin execute all documents and, where relevant, shall procure its employees to execute all documents and do all acts and things required by Curtin for the purpose of vesting Intellectual Property Rights as prescribed by this clause 11.1.
- 11.3 The Client warrants that neither it, nor its employees, agents or contractors, shall infringe the Intellectual Property Rights or any other rights of any third party in performing any Services or doing any act or thing in connection with this Agreement and that it will notify Curtin promptly in writing if it becomes aware of any such infringement.
- 11.4 The Client shall fully indemnify Curtin against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against Curtin resulting from any infringement under clause 11.3.
- 11.5 The obligations under this clause 11 shall survive the expiration of this agreement.
12. INDEMNITY
- 12.1 Without prejudice to the specific provisions of any other indemnity provided by the Client under this Agreement, the Client shall at all times indemnify, hold harmless and defend Curtin, its officers, employees, agents and consultants from and against any loss including legal costs and expenses or liability incurred by Curtin, its officers, employees, agents and consultants arising from any claim, suit, demand, action or proceeding by any person against Curtin, its officers, employees, agents and consultants where such loss or liability was caused by willful, negligent or unlawful act or omission of the Client, its officers, employees, agents or sub-contractors arising out of or in connection with this Agreement.
13. TERMINATION
- 13.1 Without limiting the generality of any other clause in this Agreement, Curtin may terminate this Agreement immediately by notice in writing if:
- any payment due from the Client to Curtin pursuant to this Agreement remains unpaid for a period of 30 days;
 - the Client breaches any clause of this Agreement and such breach is not remedied within 15 days of written notice by Curtin;
 - the Client disposes of equipment or materials or restructures its business, reallocates or reassigns its own personnel or otherwise creates a situation in which Curtin, in its opinion, is no longer able to comply with its obligations under this Agreement or no longer able to provide the Services in an efficient and cost effective manner;
 - the Client becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - the Client, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - the Client, being a natural person, dies; or
 - the Client ceases or threatens to cease conducting its business in the normal manner.
- 13.2 Without limiting the generality of any other clause in this Agreement, the Client may terminate this Agreement immediately by notice in writing if:
- Curtin breaches any clause of this Agreement and such breach is not remedied within 15 days of written notice by the Client;
 - Curtin becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - Curtin ceases or threatens to cease conducting its business in the normal manner.
- 13.3 If notice is given to the Client pursuant to clause 13.1, Curtin may, in addition to terminating the Agreement -
- retain any monies paid;
 - charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
 - be discharged from any further obligations under this agreements; and;
 - pursue any additional or alternative remedies provided by law.
- 13.4 Curtin shall not be liable in any circumstances whatsoever for any failure to perform any obligations under this Agreement where such failure is due to any cause beyond the reasonable control of Curtin including but not limited to instrumental breakdown and failure.
14. ASSIGNMENT
- 14.1 The benefit of this Agreement shall not be dealt with in any way by the Client (whether by assignment or otherwise) without Curtin's written consent. Curtin may provide personnel to perform services under this Agreement that are independent contractors of Curtin.
15. WAIVER
- 15.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by the party granting the waiver.
- 15.2 A waiver by a party pursuant to clause 15.1 will not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.
- 15.3 Subject to Clause 15.1, any failure by a party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by one party to the other, will not be construed as a waiver of the first mentioned party's rights under this Agreement.
16. SURVIVAL
- 16.1 The covenants, conditions and provisions of this Agreement that are capable of having effect after the expiration of this Agreement including but not limited to such covenants, conditions, and provisions set out in clauses 1, 2, 5, 6, 10, 11, 12, 13, and 14 shall remain in full force and effect following the expiration of this Agreement.
17. ENTIRE AGREEMENT
- 17.1 This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded. No modification or alteration of any clause of this Agreement will be valid except in writing signed by each party.
18. SEVERABILITY
- 18.1 The invalidity or unenforceability of anyone or more of the provisions of this Agreement will not invalidate or render unenforceable the remaining provisions of this Agreement. Any illegal or invalid provision of this Agreement will be severable and all the other provisions will have full and effect.
19. DISPUTES
- 19.1 Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties of their representatives shall be submitted to arbitration in accordance with the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators, Australia. During such arbitration, both Parties may be represented by a duly qualified legal practitioner.
20. GOVERNING LAW
- 20.1 This agreement will be governed by and construed according to the law of the State of Western Australia.
21. NOTICES
- 21.1 Notices under this Agreement may be delivered by hand, by mail or by facsimile to the addresses specified in Item 8 of the Schedule for each of the Parties;
- 21.2 Notice will be deemed given:
- in the case of hand delivery, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
 - in the case of posting, on the first business day being not less than two days after dispatch;
- In the case of facsimile, upon completion of transmission so long as the sending machine issues a report confirming the transmission of the number of pages in the Notice
- Revision 01-09-2004