

Conditions of Contract

The following conditions form part of the contract between Weld Australia ABN 69 003 696 526 and the client.

1. Definitions

In the contract, unless the context otherwise requires:

"loss and damage" includes without limitation direct, indirect and/or consequential loss or damage and any other costs or expenses (including legal fees on a solicitor/client basis).

"person" includes a corporation, partnership or firm, an unincorporated association, an authority and any other legal or commercial entity or undertaking.

"client" means the person who has requested that Weld Australia supply services.

"conditions" means these conditions.

"contract" means the contract between the client and Weld Australia, of which these conditions form part, that arises upon the acceptance by the client of Weld Australia's proposal or upon acceptance by Weld Australia of the client's purchase order or request.

"intellectual property rights" includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

"proposal" is a written proposal by Weld Australia to the client to supply services to the client on these terms and conditions, and includes (without limitation) any tender, estimate or quote.

"services" means the services to be provided and the work to be performed by Weld Australia pursuant to the contract.

2. Formation of the contract and exclusivity of conditions

2.1 Any proposal is open for 30 days, and, after the end of this period, Weld Australia reserves the right to vary or withdraw the proposal for any reason.

2.2 The client agrees that these conditions become binding when Weld Australia accepts the client's purchase order or request for services, or when the client accepts Weld Australia's proposal (as the case may be), and supersede and prevail over any other terms and conditions included in any work or purchase order, request or other document or communication from the client.

3. Pricing

3.1 The prices set out in a proposal are nett and will apply provided the proposal is accepted within 30 days of its date after which Weld Australia may adjust these prices for any reason, including to take into account exchange rate fluctuations and the cost of labour and materials.

3.2 Weld Australia may withdraw any proposal prior to its acceptance.

3.3 Any services, consultations and technical advice requested by the client that are not included as part of the scope of services in the proposal, will be charged as an extra at the rates set out in the proposal, or if rates are not set out, at the appropriate Weld Australia rates prevailing at the time. Services not within scope include (without limitation) the interpretation of results, reviewing and discussing reports or results with third parties and additional services required because of delays or interruptions caused by the client.

3.4 The price set out in a proposal does not (unless otherwise stated or agreed in writing) include GST, which must be added to the price and paid by the client as part of the price. Weld Australia will issue to the client a valid tax invoice.

4. Payment

4.1 Unless otherwise stipulated in a proposal, payment is due in full within 14 days of the date of each invoice and without any deductions, set-off or counterclaim. Weld Australia may invoice progressively for the value of the services performed irrespective of whether all services included in the contract have been supplied.

4.2 Time is of the essence in respect of the client's obligation to make payment. Failure to make payment when due is a default under the contract which at Weld Australia's option entitles Weld Australia at any time to do any of the following:

4.2.1 terminate the contract in accordance with clause 9.1 and receive payment in full for all work completed up to the date of termination; or

4.2.2 continue with the contract and recover all amounts outstanding under the contract and damages suffered by or as a consequence of such non-payment; or

4.2.3 suspend the provision of services until all outstanding invoices are paid; or

4.2.4 withhold the provision of any report, and retain custody of any materials, documents or other property of the client.

4.3 The client must indicate when to commence the service (within 6 months of milestone invoice date). Weld Australia reserves the right to hold all payments made in advance for a milestone in order to compensate preparation work completed by Weld Australia.

5. Reports

5.1 Written reports will not be issued until payment has been received of the final invoice unless otherwise agreed between the client and Weld Australia.

5.2 Weld Australia need only supply one copy of a report unless otherwise stated or agreed in writing.

5.3 The client must not disclose, publish, disseminate, distribute, transmit or reproduce the whole or any part of a report in any form or by any process unless to do so is permitted by the contract or the client has first obtained Weld Australia's written consent as to the form and content in which the report is to appear. Any disclosure, publication or reproduction of a report must strictly comply with the conditions of any such permission or consent and be of the whole of the report.

5.4 All analyses, results, conclusions and recommendations contained in a report are based on samples, data, and other information supplied to Weld Australia by the client or others on its behalf. Weld Australia does not accept any responsibility or liability for the representativeness of samples, or the accuracy and completeness of any other data or information, so supplied.

6. Completion date

If the services are to be completed by a specified date or time, the time for completion is to be extended appropriately by notification from Weld Australia to the client where delay or interruption to the provision of the services is caused by strikes, lock-outs, acts of war, inclement weather, unavailability of materials, acts or omissions of the client or any other circumstances beyond the reasonable control of Weld Australia.

7. Continuity of work

The client is to provide Weld Australia with reasonable continuity of work. The client must reimburse Weld Australia for any loss or damage it suffers by or as a consequence of any delay or interruption to the provision of the services resulting from acts or omissions of the client or from factors within the control of the client or by or as a consequence of the client requesting any or causing any suspension of the provision of the services.

8. WorkCover

Weld Australia warrants that it has in force all necessary insurances (including WorkCover) required by law as a consequence of the employment of its employees engaged in the provision of the services.

9. Termination

9.1 Weld Australia may terminate the contract at any time by notice to the client if:

9.1.1 the client fails to carry out any provision of the contract and the client does not remedy that failure in accordance with and within the time required by written notice to the client requiring it to be remedied; or

9.1.2 an application or order is made to or by a court or a resolution is passed for the winding up of the client or notice of intention to propose such a resolution is given; or

9.1.3 a controller (as defined in section 9 of the Corporations Act 2001) or an administrator under Part 5.3A of the Corporations Act 2001 is appointed in respect of the client, or the whole or any part of its undertaking or property; or

9.1.4 the client, being a natural person, becomes insolvent under administration as defined in section 9 of the Corporations Act 2001 or action is taken which could result in that event; or

9.1.5 anything analogous or having a substantially similar effect to any of these events happens under a law that applies to the client.

9.2 On termination of the contract under clause 9.1 Weld Australia retains its rights against the client in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

9.3 All indemnities in the contract are continuing and shall not be released by Weld Australia's neglect or forbearance or by the contract being terminated or otherwise ceasing to operate.

9.4 Weld Australia will not be liable to the client for any claims by the client for any loss and damage for, or on account of, or arising from, any termination of the contract under this clause 9 or for any suspension, withholding or retention by Weld Australia in accordance with clause 4.2.

10. Intellectual Property

10.1 The client warrants that the information, documentation and specifications of the work provided by the client, including methods, processes and apparatus to be used in the provision of the services by Weld Australia, will not infringe

or contribute to the infringement of the rights (including, but not limited to, Intellectual Property Rights) of any third party. The client indemnifies and is to keep indemnified Weld Australia against any loss and damage arising from a breach of this warranty.

10.2 The client acknowledges and agrees that all Intellectual Property Rights created, discovered or coming into existence as a result of, for the purpose of or in connection with the provision of the services vests in, and is the property of, Weld Australia as and when created, and the client hereby assigns to Weld Australia all those Intellectual Property Rights. The client agrees to do all such things, execute all such documents and perform all such acts as are reasonably required by Weld Australia to complete, validate or perfect such assignment.

10.3 Weld Australia grants an irrevocable, perpetual, non-exclusive, personal (and therefore non-assignable), royalty-free licence to the client to utilise all or any of these Intellectual Property Rights as are necessary for the client:

10.3.1 to exercise its rights, or perform its obligations, under this contract; or

10.3.2 for the conduct of its business.

11. Indemnity

The client indemnifies and is to keep indemnified Weld Australia for any loss and damage suffered by Weld Australia (including loss and damage resultant upon death or injury) by or as a consequence of any act or omission (whether negligent or otherwise) of the client or any person for whom the client is vicariously responsible.

12. Confidentiality

12.1 Each party undertakes that it will not, while the contract is on foot and for a period of 3 years after it ends, disclose to any person any confidential information of or relating to the other party that comes to the knowledge of the party, but nothing in the contract prevents disclosure of information which:

12.1.1 is required to be disclosed by any law or order of a court;

12.1.2 is already in the public domain through no wrongful act of the party; or

12.1.3 the party obtained from a third party without breach by that third party of any obligation of confidence concerning that information.

12.2 Weld Australia shall not be precluded from using for any purpose any information developed or obtained from any third party pursuant to the contract notwithstanding that it may be secret or confidential.

13. Limitations of liability

13.1 All statutory or implied conditions and warranties are excluded to the extent permitted by law.

13.2 To the extent permitted by law, Weld Australia's liability to the client under any condition or warranty that cannot legally be excluded, or for any loss and damage caused by or as a consequence of any act or omission (whether negligent or otherwise) of Weld Australia or of any other person for whom Weld Australia is vicariously responsible, is limited to Weld Australia supplying the services again or paying the cost of having the services supplied again.

13.3 If any services supplied under the contract fail to conform with the requirements of the contract then Weld Australia is not liable unless the client notifies Weld Australia of the failure within 3 months after the supply of the services, and Weld Australia's liability is in any case limited as set out in clause 13.2 and Weld Australia is not liable for any other loss and damage.

13.4 Subject always to the provisions of clauses 13.1, 13.2 and 13.3, and without limiting those provisions, Weld Australia is responsible to the client solely for the accuracy or correctness of any data/results or any other information supplied to the client pursuant to the contract and is not otherwise responsible to, or liable for any loss and damage suffered or incurred by, the client or any other person for or as a consequence of:

13.4.1 any conclusions drawn by, or the interpretations or expectations of, the client or any other person in relation to; or

13.4.2 the application or use by the client or any other person of, any such data/results or other information.

13.5 To the extent permitted by law, the client indemnifies and is to keep indemnified Weld Australia for any loss and damage suffered by Weld Australia by or as a consequence of the conclusions drawn by, or the interpretations or expectations of, any person in relation to, or the application or use by any person of, any data/results or information referred to in clause 13.4.

14. General Provisions

14.1 The client may not assign or otherwise deal with the contract except with the prior consent of Weld Australia.

14.2 Weld Australia may:

14.2.1 assign or otherwise deal with the contract; or

14.2.2 sub-contract the performance of the whole or any part of its obligations under the contract but, in so doing, Weld Australia is not relieved of its obligations to the client under the contract.

14.3 If anything in the contract is unenforceable, illegal or void then it is severed and the rest of the contract remains in force.

14.4 An amendment or variation of the contract is not effective unless it is in writing and signed by the parties.

14.5 The law of New South Wales governs the contract. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

15. Work Health and Safety Duties

15.1 As the PCBU, the client agrees with the Work Health and Safety Act 2011, Section 19 – Primary Duty of Care.

15.2 If the client resides in the state of Victoria, agrees with the Occupational Health and Safety Act 2004, Section 21 – Duties of Employers to Employees.

15.3 If the client resides in the state of Western Australia, agrees with the Occupational Safety and Health Act 1984, Section 19 – Duties of Employers.