

Ad1.41 Standard Terms and Conditions

Definitions

The following definitions apply unless the context requires otherwise:

"Company" means Advanced Composite Structures Australia Pty Ltd (ABN 15 144 940 876).

"Company Background IP" means any Intellectual Property Rights which the Company, a subcontractor of the Company or a related body corporate (as that term is defined in the Corporations Act) of the Company has created developed or owns or has the right to exercise, whether existing prior to the commencement of a Project or created independently of a Project after the commencement of the Project.

"Completion Date" means any date agreed in writing between the Customer and the Company for completion of provision of the Services.

"Confidential information" means all information which, by its nature or by the circumstances of its disclosure, is, or could reasonably be expected to be, regarded as confidential to a Party and includes concepts, technical and operational information owned or used by a Party and details of any customers or suppliers of a Party.

"Customer" means the person or entity to whom Services are supplied or are proposed to be supplied, its representatives and authorised agents.

"Customer Material" means any concept, design, product methodology, software, algorithm, management tool, workshop manual, specification, design, document, information, goods, material, tooling, equipment, or other items supplied by the Customer to the Company to allow the Company to carry out the Project.

"Intellectual Property Rights" means all statutory or other proprietary rights (including moral rights) in respect of copyright, trade mark (including the trade mark), design, patent, circuit layout rights, trade or business or company names, domain names, and any rights to registration of such rights, created by the Company after the commencement of the Project during provision of the Services.

"Order" means any written request by the Customer to the Company to provide specific Services and making reference to a Quotation, such as a purchase order.

"Party" means either the Customer or the Company.

"Price" means the amount set out in the Quotation or as otherwise agreed in writing.

"Project" is a Proposed Project which has commenced following the receipt, processing and acceptance by the Company of a valid Customer Order, and which has not been completed.

"Proposed Project" means a project proposal as defined in the Quotation.

"Quotation" is defined in Clause 1.

"Reimbursable Expenses" means all expenses reasonably incurred by the Company in providing the Services or, where specified in the Quotation, as defined in the Quotation.

"Report" means any technical report, presentation, spreadsheet, technical drawing and the like delivered to the Customer as part of the Services.

"Services" means the services or information or goods to be provided by the Company to the Customer in a Proposed Project as specifically stated in the Quotation and such further services or information or goods as are subsequently specifically agreed in writing between the Customer and the Company to be provided as part of a Project.

"Technical Proposal" means the Technical Proposal for the Project which may be referred to in the Quotation.

Standard Conditions of Contract:

The Quotation

1. The **Quotation** means the offer of the Company to provide the specified Services to the Customer at the specified Price. The Quotation comprises the Quotation and any documents referred to in the Quotation, including any applicable Technical Proposal, these Standard Terms and Conditions, and any other documents referred to in the Quotation. The Quotation represents the entire Proposed Project of the parties and supersedes all prior offers, proposals, representations or understandings (if any) of the parties in respect of matters dealt with by the Quotation. By providing an Order to the Company, the Customer agrees that it has not relied on any such prior communications or proposals in deciding whether to provide an Order to the Company, and that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Services for any particular purpose or any other matter. Where there is any ambiguity or discrepancy in the documents, the order of precedence shall be firstly the Quotation, secondly the Technical Proposal, thirdly these Standard Terms and Conditions and fourthly any other documents referred to in the Quotation, unless the Company expressly agrees otherwise in writing.

Application of Terms and Conditions

2. Any written Order or written request for the Services from the Customer, including any purchase Order, referring to a Company Quotation, is deemed to incorporate these Standard Terms and Conditions, notwithstanding any inconsistencies which may be introduced in the Customer's Order or written acceptance of a Quotation, unless expressly agreed otherwise by the Company in writing.

Performance

3. The Company shall provide the Services to the Customer at the Price, and in a good and workmanlike manner. If the Company is unable to meet any Completion Date, it shall, as soon as becoming aware of its inability to meet such Completion Date, inform the Customer and give an indication of when the particular Services will be completed.

Liability

4. (a) As far as the law permits, and subject to other any other provision in these Standard Terms and Conditions, the Company shall not be liable to the Customer in respect of any claim howsoever arising (whether arising from the negligence of the Company, its employees, agents or otherwise) for any loss or damage whatsoever in connection with the Services including but not limited to an indirect or consequential loss or loss of profit.
(b) Notwithstanding Clause 4(a), the Company shall indemnify the Customer in respect of injury to persons or damage to property of the Customer or third parties to the extent that the same is directly attributable to gross negligence on the Company's part but so that the Company's liability shall in no case exceed the Price paid for the Services.
(c) Where Customer Material has been supplied to the Company for the purposes of testing, the Company shall not be liable for any damage to, or total destruction of, that material.

Records

5. (a) The Company will maintain detailed records of all hours of labour, labour rates, outgoings to external agencies and other expenses charged to the Customer and shall, upon request, make these records available for inspection by the Customer. These records shall be conclusive proof of the amount charged to the Customer and, in the absence of manifest error, shall bind the parties.
(b) Clause 5(a) shall not apply where the Price is fixed.

Commencement of Work and Variations

6. The Company is not obliged to commence providing any Services for the Customer until receipt and acceptance in writing by the Company of the Customer's Order referring to a current Company Quotation.
(a) New Information: The Customer must advise the Company of all relevant information as it comes to hand during the life of the Project.
(b) Customer-Initiated Variations: Any variations from the Quotation requested by the Customer must be in writing and the Company will advise the Customer in writing of the cost of the requested variation.
(c) Re-Quoting of Work: The Company reserves the right decline any Services requested by the Customer which are not included in the original Quotation, and to issue a further or replacement Quotation to cover such requested Services.

- (d) Notification of proposed changes to Customer: The Company shall advise the Customer of all and any changes it deems beneficial or necessary to a Project at the earliest opportunity and provide costs in relation to these changes. These changes and costs are to be detailed in an updated Quotation.

Terms of Payment

7. The Customer shall pay to the Company without deduction or set-off the amount owing as shown on the Company's invoice within thirty (30) days, or as indicated in the Quotation, of the date of the invoice. The Company reserves the right to invoice the Customer on a monthly basis and/or to vary the terms of payment. The Company may also require full or partial payment prior to delivery or where the creditworthiness of the Customer at any time becomes, in the Company's opinion, open to doubt. Where payment is not made on the due date, the Company may charge interest to the Customer at the rate of 0.75% per month from the date of the invoice until the date of payment in full.

Suspension of the Services

8. If any sums owing to the Company are not paid by the due date, the Company may (in addition to any other rights) suspend its provision of the Services. The Customer will remain liable for payment of all amounts due under these terms and conditions including interest during the period of suspension.

Non-Poach

9. (a) The Customer must not employ, or solicit the employment of, any individual member of the Company's employees (including any contracted staff member) at any time after the placement of the Customer's Order, while the Company is engaged in the performance of the Services, or within 12 months following completion of the Services by the Company.
(b) If any of the Company's employees cease to work for the Company as a result of the Customer's breach of clause 9(a), the Customer must:
 - i. pay the Company a Placement Fee, equivalent to 30% of the Company's employee's total annual remuneration (salary plus superannuation and other benefits); and
 - ii. allow any further reasonable time in relation to the provision of the Services that may be required by the Company to replace the individual employee of the Company.
(c) If the Company is unable to perform the Services due to the Customer's breach of clause 9(a), then the Company may:
 - i. suspend performance of the Services until such time as the individual employee is replaced; and
 - ii. provide the Customer an invoice for, and the Customer must pay, the reasonable costs and expenses of the suspension.

Indemnity

10. The Customer shall on demand reimburse and keep the Company indemnified against all expenses (including legal costs and disbursements on an indemnity basis) incurred by the Company in connection with any claims made by any parties arising from the provision of the Services to the Customer by the Company except in the case of gross negligence or wilful misconduct of the Company.

Acknowledgements

11. The Customer acknowledges that:

- (a) the Quotation is based on information supplied by the Customer either in writing, verbally, electronically or by any other means. It is the Customer's responsibility to ensure the correctness of any such information supplied.
- (b) where professional assumptions have been made in the Quotation based on limited information, the Customer agrees to accept these professional assumptions in making any Order.
- (c) the Customer must advise the Company of all relevant information as it comes to hand during the life of the Project.
- (d) the Price detailed in any Quotation is, unless expressed as a fixed Price, an estimate only and that the Customer will be charged for the Services on a cost-plus-profit basis.
- (e) where the Price is expressed as a fixed Price, it shall be subject to change only in accordance with Clause 6.
- (f) unless specifically stated otherwise in the Quotation, any Completion Date, schedule or other time estimate given by the Company is an estimate only and the Company shall not be responsible for any loss or damage caused to the Customer due to delay.
- (g) all estimated times and/or dates quoted, including any Completion Date, are conditional on the following:
 - i. flow of Information from the Customer. The Customer shall supply all information and materials as required by the agreed date in order to commence, progress or conclude the Project by the agreed date.
 - ii. Customer's Suppliers. The Customer shall ensure its suppliers deliver all information and materials as required by the agreed date to ensure the Project meets schedule requirements.

Confidential Information

12. (a) The Company must not disclose, or allow to be disclosed, to any person, any of the Confidential Information of the Customer without the prior written consent of the Customer.
- (b) The Customer must not disclose, or allow to be disclosed to any person, any of the Confidential

Information of the Company without the prior written consent of the Company.

- (c) The Company must only use Confidential Information of the Customer for the purpose for which it was disclosed and must not make use of such Confidential Information or any part of it to the competitive disadvantage of the Customer.
- (d) The Customer must only use Confidential Information of the Company for the purpose for which it was disclosed and must not make use of such Confidential Information or any part of it to the competitive disadvantage of the Company.
- (e) The Company shall be entitled to retain a copy of all documents related to the Project for its records, subject to its continuing obligations under this clause.

Intellectual Property

13. (a) Copyright in any Report produced during any Project shall belong to and remain the property of the Company unless expressly agreed otherwise by the Company in writing. The Customer may reproduce or replicate any Report but only in its entirety and in the form provided by the Company, and the Customer shall not, without the written consent of the Company, reproduce or replicate any Report which has been modified from the form provided by the Company.
- (b) The Customer acknowledges that nothing in any part of the Quotation operates to grant to the Customer any right, claim, title or interest in or to any Company Background IP unless it is specifically stated to the contrary. By providing an Order to the Company, the Customer agrees that Company Background IP must not be disclosed to any third party without the Company's prior written consent.
- (c) Unless specifically stated otherwise in writing in the Quotation, the Company provides no warranty to the Customer that the provision of the Services does not infringe the Intellectual Property Rights of any third party.
- (d) By providing an Order to the Company, the Customer grants the Company a non-exclusive licence to use the Customer's Intellectual Property Rights, including in the Customer Material, to the extent necessary for Company to provide the Services.
- (e) Subject to clause 15, in providing an Order to the Company, the Customer warrants to the Company that Customer Material provided by the Customer does not infringe the intellectual Property Rights of any third party and indemnifies the Company against breach of that warranty.
- (f) The Customer grants the Company a royalty-free right to use the any Intellectual Property arising from the Project for the purpose of internal research or internal operations.

Property, Title and Risk

14. (a) The Company warrants that, except in relation to intellectual property rights of third parties, it has good title to the Services, and, subject to other any other provision in these Standard Terms and Conditions, will transfer such title as it may have in the Services to the Customer.
- (b) All risk arising from damage to, or loss of, the Services shall pass to the Customer upon delivery.
- (c) Notwithstanding delivery and the passing of risk in the Services, and subject to any other provision of these Standard Terms and Conditions, unless otherwise specifically agreed in writing, all rights to the Services remain the property of the Company until such time as the Customer discharges all obligations to the Company, including the full and unabated payment, in cash or cleared funds, of the Price of the Services, and of all other Services, agreed to be provided by the Company to the Customer, for which payment is at that time due. Upon such full payment of the Price, all rights to the Services shall vest in the Customer, except as otherwise provided in these Standard Terms and Conditions. The Customer further agrees that supply of any Services to the Customer or use of any Services by the Customer prior to full and unabated payment being made to the Company do not imply granting of any licence for the use of the Services.

Warranty

15. (a) The Customer warrants that, in placing any Order, the Customer is the owner who is entitled to possession of all Customer Material provided to the Company and that it is authorised to allow the Company to test, use, work on or otherwise deal with the Customer Material except as specifically notified in writing before supply of such Customer Material
- (b) The Customer warrants that it has and shall maintain adequate product liability insurance for any articles incorporating in any way any part of the Services that it delivers to its customers, and the Customer warrants that this insurance shall cover the Company for the Services, delivered by Company to the Customer.
- (c) The Company warrants that (subject to the conditions set out herein) the Services will correspond, at the time of delivery, with the Quotation and any specification agreed by the Company in writing.
- (d) Any claim by the Customer based on any defect in the quality or condition of the Services, or the failure of the Services to correspond with the Quotation or any specification agreed by the Company in writing shall (whether or not delivery is refused by the Customer) be notified to the Company within ten (10) days from the day of delivery at the Customer's premises or (only where the defect or failure was not apparent on reasonable receiving inspection and is identified within a period of twelve (12) months from the date of delivery) within ten (10) days from the discovery of the defect or failure. If delivery is not refused, and

the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Services and the Customer shall be bound to pay the Contract price as if the Services had been delivered in accordance with the Contract.

- (e) Where any valid claim in respect of the Services, (which is based on any defect in the quality or condition of the Services, or its failure to meet the terms of the Quotation or any specification agreed by the Company in writing) is notified to the Company in accordance with these terms, the Company shall be entitled to rectify the Services in question free of charge or, at the Company's sole discretion, refund to the Customer the price of the Services; but the Company shall have no further liability to the Customer.
- (f) The Company shall be under no liability:
- i. In respect of any defect or shortcoming in the Services arising from any error and/or deficiency which exists in any drawing, design, information or specification supplied by the Customer or from any instruction by the Customer;
 - ii. In respect of any defect in the Services arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or written), misuse or alteration of the Services without the Company's approval;
 - iii. If the total price for the Services has not been paid by the due date for payment; or
 - iv. In respect of parts and materials included in the Services not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee which is given by the manufacturer of such parts or materials to the Company.
- (g) Except as expressly provided in these terms, all warranties, conditions or other terms, implied by statute or common law, including Part IVAA of Wrongs Act 1958 (Vic) and Sale of Goods Act 1958 (Vic) are excluded to the fullest extent permitted by law.

Termination

16. (a) The Company may terminate any Project by written notice to the Customer if:
- i. the Customer fails to make any payment due under the Order, or any part of the Quotation, within 7 days of the due date.
 - ii. the Customer breaches any material term of the Order, or any part of the Quotation, and, in the case of a breach capable of remedy, fails to remedy the breach within 7 days after receipt of written notice by the Company.
 - iii. a petition (other than a vexatious application) is presented or a resolution passed for the winding up of the Customer.

- iv. the Customer goes into liquidation (except for the purposes of amalgamation or reconstruction).
 - v. the Customer undergoes any change in beneficial ownership or control.
 - vi. the Customer ceases or threatens to cease to carry on its business.
 - vii. the Customer disposes of the whole or any part of its business.
- (b) Upon termination of a Project pursuant to this Clause all moneys owned by the Customer to the Company shall become immediately due and payable by the Customer.

Assignment

17. The Customer or the Company shall be entitled to assign or transfer any of its rights or obligations under any Project only with the prior written consent of the other Party, which consent shall not be unreasonably withheld.

Waiver

18. Failure by either party to insist upon strict performance of any term, warranty or condition of any part of the Quotation shall not be deemed a waiver thereof or of any rights either party may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

Severability

19. If any provision of these terms and conditions is prohibited or unenforceable it shall be deemed to be severed to the extent that it is prohibited or unenforceable, but the remainder of the relevant clause or part of the clause that is not prohibited or otherwise unenforceable shall remain in full force and effect.

Jurisdiction

20. The Quotation and these Terms and Conditions are governed by the laws of the State of Victoria, Australia, and all parties agree to submit to the jurisdiction of the Courts in that State.

Notices

21. Any notices, demands, consent or other communications under these Terms and Conditions or any Offer or Customer Order shall be in writing and sent by pre-paid post, facsimile, electronic mail or by hand.

Entire Quotation

22. The Quotation incorporating these Terms and Conditions contains the entire offer from the Company as at the date of the Quotation with respect to its subject matter and supersedes all prior offers, proposals, undertakings, agreements or understandings between all parties in connection with it.

Quotation

23. Unless otherwise stated in the Quotation, any Quotation provided by the Company remains current and open for no more than 30 days from the date of the Quotation.

The Company Lien

24. In addition to any lien to which the Company may by statute or otherwise be entitled, the Company shall, in the event of the Customer's insolvency, bankruptcy or winding up or in the event of failure by the Customer to pay any sum owing to the Company by the due date, be entitled to a general lien on all property or goods belonging to the Customer in the possession of the Company (notwithstanding that such goods or some or part of them may have been paid for) for the unpaid price of any Services provided to the Customer under any Project.

Force Majeure

25. The Company shall not have any liability under any Project for any matter beyond its control (including without limitation, any strike, lock-out, all forms of industrial action, war and civil disobedience).

Interpretation

26. The headings in this Standard Terms and Conditions document are intended only for convenience and shall not affect its construction.

Revision v, November 2019