
GENERAL CONDITIONS

These General Conditions ("General Conditions") apply to the provision of all services and sale of any goods by OCTIEF Pty Ltd ACN 163 772 478 and/or OCTIEF ACT Pty Ltd ACN 108 729 737 ("OCTIEF") to the Client mentioned in the Fee Proposal or other agreement that refers to these General Conditions. By requesting OCTIEF to proceed with work referred to in the Fee Proposal, the Client agrees to be bound by the Terms of these General Conditions, as modified by the specific provisions of the Fee Proposal (together referred to as "this Agreement") for the remuneration set out in the Fee Proposal.

1. PROVISION OF SERVICES

- 1.1 OCTIEF will provide the Services listed in the Scope of Work set out in the Fee Proposal to the Client on the Terms set out in this Agreement.
- 1.2 If a Nominated Consultant is mentioned in the Fee Proposal then the Services will primarily be provided by the Nominated Consultant.
- 1.3 OCTIEF will perform the Services:
 - (a) applying appropriate expertise and using reasonable care;
 - (b) in accordance with applicable laws and regulations.
- 1.4 Where the Client has requirements that apply to contractors who enter the Client's work site ("Work Site Requirements"), the Client must provide details of those requirements in writing to OCTIEF. OCTIEF:
 - (a) reserves the right to withdraw its Fee Proposal and substitute an amended Fee Proposal where the Work Site Requirements will increase the resources OCTIEF must deploy to provide the Services; and
 - (b) subject to agreement on the Price of the Services, agrees to comply with the Client's reasonable Work Site Requirements.
- 1.5 OCTIEF will perform the Services during the hours of 6:00am to 6:00pm on Business Days except where the Client requires work to be performed outside those times. If that is required, the Client will be charged a 25% loading for work done outside those hours and a 50% loading fee for work required to be performed on public holidays.
- 1.6 Where OCTIEF must spend extra time to perform Services as a result of circumstances outside of OCTIEF's control (for example, but not limited to site access delays, additional scope of works, delays in the provision of supporting documentation and/or decision making by the Client, or the presence of any hazards that may affect provision of the Services), the Client will be charged for that additional work at the applicable rate set out in the Pricing Schedule.
- 1.7 Where analytical results from the Services provided to the Client trigger 50% of the National Exposure Standard, additional fees will be applicable as per the Pricing Schedule.
- 1.8 OCTIEF will endeavour to commence performance of the Services on the Commencement Date mentioned in the Fee Proposal.

2. PAYMENT

- 2.1 The Client must pay the Price stated in the Fee Proposal for each of the Services listed therein, according to the Pricing Schedule and the Payment Terms set out in the Fee Proposal.
- 2.2 Where there are no Payment Terms set out in the Fee Proposal and no alternate terms of payment have been agreed to, the Client will be issued with a tax invoice upon provision of the Services and OCTIEF will require payment prior to delivery of any report or other thing to be delivered to the Client.
- 2.3 Where OCTIEF agrees to provide credit terms to the Client and there is no provision in this Agreement or other written agreement to the contrary:
 - (a) OCTIEF will render tax invoices monthly; and
 - (b) the Client must pay those invoices within fourteen (14) days of issue.
- 2.4 Where the Client fails to pay the invoiced Price when due, interest shall be payable on amounts outstanding at the Interest Rate.
- 2.5 In addition and without limitation to any other rights OCTIEF may have, if any invoice or amount is not paid by the Client when due, OCTIEF may at its sole discretion, without notice to the Client, cease work on or delay, suspend and/or refuse to provide Services or any report yet to be provided as part or any other services contemplated under a separate fee proposal or agreement with the Client. In those circumstances, the Client shall have no right to object or claim compensation as a result of failure by OCTIEF to provide any of those Services.
- 2.6 If a credit agreement is entered into between OCTIEF and the Client, the terms of that credit agreement will apply to this Agreement and will modify the terms of these General Conditions where inconsistent, but will be subject to the specific terms set out in the Fee Proposal.

3. TENDERS

- 3.1 Where OCTIEF submits a Tender to the Client that adopts these General Conditions:-
 - (a) upon acceptance of that Tender by the Client, these General Conditions shall apply;
 - (b) OCTIEF may vary or withdraw its Tender at any time prior to acceptance of the Tender; and
 - (c) unless otherwise provided for in the Tender, it will remain open for acceptance for thirty (30) days from the date thereof and is thereafter taken to be withdrawn.

3.2 Any subsequent contract between OCTIEF and the client arising from a Tender ("**Contract**") shall be upon the terms under this Agreement unless otherwise agreed to in writing prior to the commencement of the Contract and these General Conditions are to be included in the Contract.

4. INDEPENDENT CONTRACTOR

4.1 OCTIEF provides Services to the Client under this Agreement as an independent contractor. Neither this Agreement nor the provision of the Services will create any relationship of employer and employee or partnership or joint venture or agency between the Client and OCTIEF or any Nominated Consultant.

5. NON-EXCLUSIVITY

5.1 OCTIEF may undertake or enter into agreements similar to this Agreement for the Services, or services similar to the Services and the Client will not be entitled to make any objection or change. The Client will not commit or permit any act which may interfere with the performance of work by OCTIEF to any other client.

6. WARRANTIES

6.1 The warranties contained in this clause are additional to the warranties implied by law. Each of the warranties will be read and construed as a separate and independent warranty and will not be limited by reference to each other. All warranties will be valid at all times during the provision of the Services and will be continuing warranties which will survive the termination or expiration of this Agreement.

6.2 The Client warrants to OCTIEF that as at the date of this Agreement and for the duration of this Agreement:

- (a) it has complied with all Applicable Legislation the Client is subject to, that affects OCTIEF's performance of the Services;
- (b) the Client will identify in writing to OCTIEF prior to commencement of the Services, all hazards known to the Client that may affect the persons who will perform the Services;
- (c) the Client will provide a safe workplace for performance of the Services, subject to the hazards specifically identified by the Client in pursuant to clause 6.2(c);
- (d) The Client is not insolvent and no controller has been appointed over any part of its assets and no such appointment has been threatened; and
- (e) The Client is not bankrupt or in liquidation or administration and no proceedings have been brought or threatened for the purpose of bankrupting or winding up the Client.

7. INDEMNITIES

7.1 The Client shall be liable for and shall indemnify OCTIEF (including OCTIEF'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) any liability, claim, suit, action or proceeding whatsoever against OCTIEF in respect of personal injury (including illness) or death or loss or damage to property;
- (c) any 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 OCTIEF 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 Client, or otherwise by any act or omission by the Client, its servants, agents or contractors.

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

8. WAIVER, RELEASE, DISCHARGE

8.1 To the extent permissible at law, the Client releases, discharges, waives and forever holds harmless OCTIEF from all claims for any loss sustained by the Client arising from the Services, whether caused by OCTIEF's negligence or wilful act or omission, breach of contract, breach of statutory duty or otherwise in connection with Services. Where despite this clause OCTIEF has any liability to the Client, then to the extent permissible at law, the damages OCTIEF shall be liable for shall be limited to re-performing defective Services or refunding to the Client the fees charged by OCTIEF to the Client for the relevant services. OCTIEF shall not in any circumstance be liable for any loss or damage to the Client in the nature of economic loss or consequential damages.

9. ASSIGNMENT

9.1 The Client shall not without the prior written consent of OCTIEF assign or attempt to assign the benefit of this Agreement for the whole or any part of the provision of the Services.

10. TERMINATION

10.1 Either Party may immediately terminate this Agreement by notice in writing to the other Party if:

- (a) the other Party indicates that they no longer intend to comply with the terms of this Agreement;
- (b) the other Party is otherwise in default under this Agreement and does not remedy such

default within seven (7) days of receipt of notice requiring it to do so; or

- (c) the other Party becomes insolvent or enters receivership or administration.

11. NOTICES

11.1 All notices authorised or required under this Agreement to be given by a Party to the other shall be in writing, sent by facsimile or email, delivered personally, or sent by registered post, and in each case addressed to the other Party at the Party's Address for Service or as the case may be at such other address as a Party may from time to time notify to the other Party.

11.2 The following will constitute proof of receipt:

- (a) if sent by registered post, proof of posting by registered post; or
- (b) if sent by facsimile or email, a successful facsimile or email transmission report;

11.3 Receipt of a notice given under this Agreement will be deemed to occur:

- (a) in the case of a communication sent by registered post on the third business day after posting;
- (b) in the case of a facsimile, at the time and date shown on any report issued by the sender's facsimile machine indicating that the facsimile has been successfully transmitted and if after 4:30pm on a Business Day, the following Business Day. If sent by email the time of receipt is when the email enters the recipient's mail server.

12. INTELLECTUAL PROPERTY

12.1 The Client agrees and acknowledges that OCTIEF owns the Intellectual Property and that no right, title or interest in any of the Intellectual Property is transferred or granted to the Client other than the rights granted expressly by this Agreement.

12.2 OCTIEF is free to enter into any arrangements in respect of the Intellectual Property with any other person or entity provided such arrangements do not adversely affect OCTIEF's ability to perform its obligations under this Agreement.

13. GENERAL

13.1 GST

- (a) Unless expressly included, the consideration expressed to be payable under the Pricing Schedule, or under any provision of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- (b) To the extent that any supply made under or in connection with this Agreement is a taxable supply by OCTIEF to the Client, 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.

13.2 Force Majeure

Where a Party is unable to comply with its obligations (other than an obligation to pay money) under this

Agreement as a result of a Force Majeure, that Party's obligation so affected by the Force Majeure shall be suspended whilst the Force Majeure continues.

13.3 Binding on Successors

This Agreement shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

13.4 Governing Law

This Agreement is governed by the laws of the State or Territory in which the relevant Services are performed and the Commonwealth of Australia which are in force in the relevant jurisdiction.

13.5 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.

13.6 Waiver

No waiver by a Party of a provision of this Agreement is binding unless made in writing.

13.7 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.

13.8 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.

13.9 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. DEFINITIONS

14.1 In this Agreement unless inconsistent with the context or subject matter:

"Address for Service" means in relation to each Party:

OCTIEF: Queensland – Unit 34/ 53-57 Link Drive, Yatala QLD 4207

Australian Capital Territory - 17B Capital Terrace, Queanbeyan East NSW 2620

Northern Territory – Unit 12/ 16 Charlton Court, Woolner NT 0820; and

Client: the Client's address shown in the Fee Proposal;

"Applicable Legislation" means all acts of parliament, whether State or Commonwealth and all orders, by-laws and regulations made thereunder;

"Business Day" means Monday to Friday but does not include public holidays;

"Client" means the Client to whom the Fee Proposal addressed;

"Commencement Date" means the date of this Agreement;

"Confidential Information" means information relating directly or indirectly to OCTIEF, its assets and the operation and affairs of OCTIEF, including without limitation, this Agreement, the provision of the Services, and staff information in any form whatsoever;

"Fee Proposal" means the fee proposal submitted by OCTIEF to the Client attached to these General Conditions or any other fee proposal (including a tender offer) made by OCTIEF to the Client that states that it incorporates these General Conditions;

"Force Majeure" means an act, omission or circumstance over which a Party could not reasonably have exercised control;

"Intellectual Property" means all patents, trade marks, designs, and copyright or other intellectual property contained in any correspondence, reports or other documentation owned by OCTIEF and provided to the Client by OCTIEF;

"Interest Rate" means the Cash Rate Target published by the Reserve Bank of Australia from time to time plus 5%;

"GST" has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"National Exposure Standard" means the standards of exposure as defined in the Adopted National Exposure Standards For Atmospheric Contaminants In The Occupational Environment [NOHSC: 1003 (1995)];

"Nominated Consultant" means the person, if any, specified in the Fee Proposal as being primarily responsible for the provision of the Services;

"Party" and **"Parties"** means OCTIEF and/or the Client, as the context requires;

"Payment Date" means the date specified in the Fee Proposal under Payment Terms and where no payment is specified in the Fee Proposal, the payment date will be the date specified on the invoice issued by OCTIEF to the Client;

"Payment Terms" means the terms by which the Client must make payment to OCTIEF specified in the Fee Proposal;

"Pricing Schedule" means the schedule of rates and prices set out under the heading "Pricing Schedule" in the Fee Proposal;

"Price" means the price of the Services specified under "Pricing Schedule" in the Fee Proposal;

"Services" means the services specified in this Agreement (including any part of the specified services and the results of the specified services) unless otherwise agreed to in writing by OCTIEF from time to time; and

"Tender" means a tender, submission, fee proposal, offer (including counter-offer) or quotation in connection with the services the subject of the contract.