



TERMS & CONDITIONS OF SALE

Services are sold and supplied by Alterrain Pty Limited on the following General Terms and Conditions unless otherwise expressly agreed in writing between Alterrain Pty Limited and the Client.

1. DEFINITIONS

1.1 "Client" means the person or company to whom or to which this document is addressed.

1.2 "Services" mean the services supplied by Alterrain to the Client as set out in the attached quotation.

2. GENERAL

2.1 These terms form part of any quotation or contract attached, for the supply of Services supplied by Alterrain.

2.2 If there is any inconsistency between the provisions of the attached quote and these terms, then these terms will prevail.

2.3 If one or more clauses of these terms or any provisions included in any quotation or contract arising between Alterrain and the Client is declared legally invalid the remainder of these terms and any such provision shall not be affected.

2.4 These terms shall apply to any separable portion of any quotation or contract arising between Alterrain and the client and to the Goods supplied thereunder.

2.5 THE CLIENT'S ATTENTION IS DRAWN TO STATUTORY PROVISIONS WHICH MAY APPLY TO THIS CONTRACT Any rights, remedies, liabilities, conditions, warranties, standards or specifications which apply to arise from these terms of contract are subject to and in addition to the Trade Practices Act 1974 or any other state or federal legislation which may apply.

3. QUOTATION AND OFFER TO PURCHASE

3.1 Alterrain's quotation is an invitation to the Client to make an offer to purchase Services subject to these terms. The Client's order shall constitute such an offer to purchase. Alterrain reserves the right to make alterations to its quotation at any time before its acceptance by the Client.

3.2 Despite any quote given, no contract exists between Alterrain and the Client until Alterrain accepts the Client's order in writing or, by the submission of a purchase order by the Client.

3.3 Alterrain's quotation relates only to such Services as are specified in the quote.

3.4 Prices included in Alterrain's quotation are based upon the quantities of Services referred to in the quotation. Should the Client offer to purchase a quantity of Services which is different to the quantity referred to in the quotation Alterrain reserves the right to vary the price (whether higher or lower) for such Services.

3.5 In the event of any inconsistency between Alterrain's quote (or any special conditions set out in the quote) and, these Terms then the following precedence shall apply:

3.5.1 These terms shall prevail and then in precedence as follows:

- (a) Any special conditions attached to the quotation;
- (b) The quotation.

4. SPECIFICATIONS AND DRAWINGS Not Part of Contract

4.1 All descriptions, shipping specifications, drawings, dimensions and weights submitted by Alterrain in relation to any quotation are approximate only and any descriptions, illustrations and data contained in any catalogues prices list and/or other advertising or promotional material are intended by Alterrain only to present a general view of the Services described therein and do not form part of this agreement.

4.2 The Client should satisfy itself that any calculations, specifications, drawings, dimensions, weights, descriptions, illustrations or data or quantities in the quotation are sufficient to meet the Client's requirements.

Certified Drawings

4.3 After Acceptance of the Client's order Alterrain shall at the Client's request provide to the Client such certified drawings relating to the Services as are in Alterrain's opinion reasonable and necessary.

Confidential Information

4.4 All information relating to patents, designs, other intellectual property, drawings, specifications, computer programs, information, samples and the like provided by Alterrain shall be regarded as confidential and shall not be copied, used or disclosed by the client to any third party except with Alterrain's prior written consent, and shall only be used pursuant to the contract for which they are provided.

Sufficient Information to be provided

4.5 The Client's order shall be accompanied by sufficient information to enable Alterrain to commence work and proceed without interruption.

Client's approval of Drawing etc.

4.6 Any drawings or other information requiring the Client's approval shall be approved, amended or rejected and returned by the Client to Alterrain within 14 days of the date of receipt by the Client of such drawings or other information or such other period as may be agreed in writing by Alterrain and the Client. Any delay beyond such 14-day period or such other period agreed to shall constitute grounds for extension of the contract period under **clause 6.4** of these terms.

Incorrect Information

4.7 The Client shall be responsible for and bear the cost of any alteration to the Services supplied by Alterrain rising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Client.

Responsibility for Licences, approvals etc

4.8 Unless otherwise agreed in writing it shall be the responsibility of the Client to obtain and provide all licences, access, approvals, or permits as necessary for performance of the Services by Alterrain.

5. Inspection and Tests

5.1 Where inspections and tests are performed, they will be undertaken in accordance with Alterrain's standard practice. Such inspections and tests, together with any additional tests as may be specified in Alterrain's quotation, are the only inspections and tests included in the quoted price. Should any further inspection or test be required by the Client these may result in an increase in the contract for the Services agreed to be supplied by Alterrain to the Client.



5.2 Where the carrying out of a inspections or test has been agreed, Alterrain shall give the Client seven days notice that Alterrain is ready to carry out such an inspection or test, and if the Client is absent from a duly notified inspection or test then the inspection or test will be deemed to have been undertaken in the Client's presence.

6. TIME/DATE FOR SUPPLY

Base Date

6.1 All dates or times quoted for completion or delivery shall be calculated from date of acceptance by Alterrain of the Client's order together with sufficient information as referred to in **clause 4.5** of these terms.

Quoted Time

6.2 Alterrain will use reasonable endeavours to meet the completion date or period quoted but such date or time is a bona fide estimate only and is not to be construed as a fixed date or time unless specifically agreed to by Alterrain in writing.

Extension of Time

6.3 Alterrain can require an extension to any contract period for any delay relating to either instructions given by, or lack of instructions from, the Client.

6.4 Alterrain shall not be liable to the Client for any failure to meet any obligation under any contract arising between Alterrain, and the Client to the extent that such failure is caused by or arises from:

- i) Strikes, lockouts or other industrial disputes, shortages of labour or materials, delay in manufacturing by Alterrain, its associates or suppliers, riot, civil commotion, fire, flood, earthquake, drought, loss or delay at sea or otherwise, breakdowns or war; or
- ii) Any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of Alterrain.

7. PRICES AND CONTRACT PRICE ADJUSTMENT

Price Basis

7.1 Unless otherwise stated in writing, prices quoted by Alterrain are based on the cost of material, labour, freight, insurance, and duties and other costs and charges as at the date of any quotation or such other date specifically referred to. Alterrain may vary or adjust the quoted price at anytime during the performance of this agreement to reflect, changes in:

- (i) Exchange rates which affect the cost of products supplied to Alterrain
- (ii) Customs and excise duties, levies, charges, imposts and the like;
- (iii) Transport costs; and
- (iv) Site specific labour costs, bonuses and site allowances.

Sales Tax and other excluded charges

7.2 Charges specifically excluded in any quotation shall be to the Client's account at cost.

7.3 Unless otherwise stated in writing in any other quotation, sales Tax or any other tax, levy or the like imposed on either the sale, manufacture, dealing with, distribution, import or use of goods or measured by the selling price of goods or otherwise howsoever included or added to the price of goods shall in all cases be an excluded charge.

7.4 Unless otherwise stated in writing in any quotation customs duties, levies, taxes and the like imposed in respect of the import goods applicable at the date of any quotation or such other date specifically referred to therein in respect of such matters have been included in the price and, any variation thereto, for whatever reason, shall be to the Client's account at cost in accordance with **clause 7.1** of these terms.

Cost of Delay or Variation

7.5 Where in respect of any contract between Alterrain and the Client work is delayed or varied by the act or omission of the Client, or, that his/its agent, or any contractor for whom he/it is responsible, Alterrain shall notify the Client of any additional costs which will be incurred as a result of such delay or variation, which additional costs shall be to the account of the Client.

Costs of Complying with Regulations

7.6 If the costs of Alterrain of performing its obligations under any contract between Alterrain and the Client shall be varied by reason of the creation or amendment after the date of quotation of any law or of any order regulation or by-law having the force of law, the amount of such increases or decreases shall, as applicable be added to or deducted from the contract price AND even where such price is quoted as firm it is subject to adjustment for cost variations caused by such creation or amendment.

Cost

7.7 For the purpose of clause 10 of these terms the expression 'cost' is deemed to include overheads and interest paid by Alterrain.

Exchange

7.8 Exchange payable shall be calculated at the rate of actually paid by Alterrain.

8. PAYMENT

Payment Due

8.1 Unless otherwise agreed in writing by Alterrain and the Client payment shall be due as follows:

(a) The Client shall pay the amount due under any tax invoice issued within thirty (30) days of the date of the tax invoice.

(b) The Client is not entitled to withhold payment or make any deduction from the contract price or any tax invoice in respect of any alleged set-off or counter claim.

(c) The Client grants Alterrain a charge over its assets for any current or prospective debt owing to Alterrain under this agreement by the registration of:

(i) A caveat over any real property owned by the Client; and /or

(ii) A fixed and floating charge under the provisions of the Corporations Act 2001 (CTH).

8.2 If delivery of the Services is delayed by reason of fault, omission or breach of this agreement by the Client, then full payment of that part of the contract price outstanding shall be due and payable 14 days after written notice by Alterrain to the Client that the Goods are ready for delivery as though delivery had been completed in accordance with clause 7.1 of these terms.



9. DELAY OR DEFAULT IN PAYMENT

9.1 Should the Client default in respect of any payment due to Alterrain then Alterrain shall have the right, in addition to all other rights to which it is entitled at law, to charge interest on the overdue amount at two percent (2%) above the business overdraft rate of the Australian and New Zealand Banking Group Limited on and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Client to Alterrain shall be credited first against any interest so accrued.

Retention

9.2 Any retention amounts agreed to by Alterrain will be given in the form of either insurance or Bank Guarantees which the Client must return and release on expiry of the defects liability period specified in clause 11.4 (ii) of these terms.

10. WARRANTY

10.1 Alterrain hereby warrants to the Client that the Services supplied by Alterrain, or its related companies, shall delivered in a good and workmanlike manner.

10.2 If it is proven to Alterrain's reasonable satisfaction that Services provided by Alterrain or its related companies are not delivered in a good and workmanlike manner then Alterrain shall, at no cost and at Alterrain's discretion, either:

- (i) undertake the Services again and or repair any defect;
- (ii) refund to the Client the contract price of such Services.

10.3 This warranty does not apply in respect of defects due to or arising from:

- (i) incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lighting, accident, neglect, faulty erection (unless carried out by Alterrain), acts of God, causes beyond Alterrain's control or whilst unauthorised repairs or alterations have been carried out; or
- (ii) any error, omission or fault arising from drawings, designs, certifications, specifications or instructions provided by the Client or, any agent, employee or contractor engaged on behalf of the Client.

10.4 This warranty does not apply unless:

- (i) the Client has obtained all necessary approvals; and
- (ii) defects occur within 12 calendar months after the Services have been provided to the Client or, if the supply was delayed beyond Alterrain's control then within 12 calendar months of supply or within 18 calendar months after Alterrain first notified the Client that Alterrain was ready to supply the Services (whichever period expires earlier);
- (iii) Alterrain is notified in writing within seven days of the alleged defect first coming to the notice of the Client, or if necessary, at the sole discretion of the

Alterrain, to the works where such Services were supplied, free of charge; and

(iv) The Client has fulfilled all of his/its contractual obligations.

10.5 The benefit of this Warranty is personal to the Client and is non-assignable without the prior written consent of Alterrain.

11. LIMITATION OF LIABILITY

11.1 Subject to clauses 2.5, 6.3, 6.4 and 8.3 of these terms, and despite anything else express or implied in these terms, Alterrain shall not be liable for any injury to persons, damage to property or, for any special indirect or consequential loss or damage whatsoever (such as but not limited to loss of profits, loss of use, loss of power, cost of capital or cost of replacement power) arising in any way whether directly or indirectly and, whether as a result of negligence on the part of Alterrain or its servants, agents and contractors or otherwise, arising out of or resulting from whether directly or indirectly from the Services.

11.2 Clause 12.1 shall not operate where the Client is a "consumer" for the purpose of Trade Practises Act 1974, in which case Alterrain's liability shall be limited to and may be fully discharged by, at Alterrain's sole discretion, the replacement of Services or the supply of equivalent Services or a refund of all payments made under the relevant contract.

11.3 The Client warrants that any designs, drawings or instructions furnished or given by it to Alterrain shall not be such as to cause Alterrain to infringe any Letters Patent, Registered Design, Trademark or copyright or other intellectual property right, and the Client hereby indemnifies Alterrain and agrees to keep Alterrain indemnified against any claims, cost or losses (including and not limited to consequential loss) which may arise against or be incurred by Alterrain by reason of any such infringement.

12. BANKRUPTCY, LIQUIDATION AND DEFAULT

12.1 If the Client makes any default under any contract between Alterrain and the Client, or:

(i) being a person, dies or commits on act of bankruptcy;

(ii) being a company, take or have taken against it any action for the winding up of the company or, the placing of the company under official management or receivership offer than for purpose or reconstruction has an execution levied against it;

or

then, Alterrain at its sole discretion and without prejudice to any other rights it may have under such contract or law may:

- (a) give notice in writing to the Client and after 14 days from the date of such notice may, unless otherwise by law, suspend or cancel such contract (including, without deferring manufacture the performance of the Services); or
- (b) require payments in cash before or on the delivery of the Services; or
- (c) may cancel any undelivered or uncompleted Services then outstanding under such contract; or
- (d) enter onto and recover from the Client's premises (or premises under its control) the property of Alterrain;

without prejudice to any claim it may have towards damages for any loss resulting from such disposal and may retain any



security or monies held paid by the Client in relation to such contract and apply such security or monies against assessed loss or damage incurred by it in relation to such default.

13. SERVICE OF NOTICES

13.1 For the purpose of service of any document or notice in connection with any quotation or contract it shall be sufficient for either party to forward such document or notice by prepaid mail if within Australia or first class air mail beyond Australia, with appropriate postage prepaid, or by email to the last known address of the other party and shall be deemed to have been received by the other party on the second business day following the date of posting or if by telex, upon receipt of the delivery receipt.

14. LEGAL CONSTRUCTION

14.1 Except as may be otherwise agreed in writing between Alterrain and the Client any contract arising between Alterrain and the Client shall be construed and operate as an Australian contract and in conformity with the laws of and applicable in the State of New South Wales and Alterrain and the Client agree to submit to courts having jurisdiction in that State.

15. GST

15.1 GST means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (the "GST Act") or any Act of the parliament of the Commonwealth of Australia subsequently in the form of, or which has a similar effect to, the GST Act the price shown in this contract does not include GST.

If Alterrain becomes liable to pay GST in respect of the sale or supply of the subject matter of this contract, the price payable under this contract will be increased so that the after payment of the GST by Alterrain, the nett amount retained by Alterrain is the same as before GST applied.

If Alterrain becomes liable to pay GST, Alterrain will notify the Client of the amount of GST to be paid and will provide the Client with the appropriate invoice including a reference to the applicable amount of GST.

The Client shall pay that invoice pursuant to the terms and conditions of this agreement.

16. USE OF EXPLOSIVES

16.1 The Services provided by Alterrain will require in certain circumstances the use of explosives as defined by section 3 of the *Explosives Act*, 2003 (NSW) as amended ("Explosives").

16.2 The Client acknowledges that the use of Explosives by Alterrain will expose the Client and the community to foreseeable risk and, the Client nor any employee, agent or contractor under the Client's control shall interfere with Alterrain's obligations as may be required by the *Explosive Act*, 2003 or any Regulations enacted pursuant to that Act or, to any obligation owed by Alterrain under any Occupational Health and Safety legislation or otherwise at law.

16.3 Alterrain expressly reserves its rights to suspend the performance of the Services without penalty, where Alterrain considers that there is a risk of damage or injury being suffered by any person or entity arising from the use, storage or transportation of Explosives.

16.4 Alterrain may terminate this agreement where the Client (including and not limited to its employees, agents or contractors under its control) fails or refuses to follow any direction given by Alterrain in relation to the use, storage and transport of Explosives.

16.5 Alterrain shall not be liable for any costs, loss or damage suffered by the Client as a result of Alterrain exercising its rights under clauses 16.2, 16.3 and 16.4 of these terms.