

# IKM TESTING AUSTRALIA PTY LTD

## SERVICE TERMS AND CONDITIONS



1. **Application**

Unless otherwise agreed in writing, these terms and conditions will apply to any and all Contracts concerning Service Works and where IKM Testing Australia Pty Ltd shall provide service Personnel and specified service Equipment as defined in these terms and conditions.
2. **Definitions**

**Affiliated Company** means in relation to an entity, any enterprise directly or indirectly controlled by that entity, any enterprise that directly or indirectly controls that entity, or any enterprise under the same direct or indirect control as that entity.

**Contract** means the Contract for Service Work consisting of the Purchase Order as accepted by the Contractor, these terms and conditions and any special conditions detailed in the Purchase Order and explicitly accepted in writing by the Contractor.

**Contractor** means IKM Testing Australia Pty Ltd.

**Contractor Group** means the Contractor, and his its Affiliated Companies participating in the Service Work, the Contractor's Sub-contractors and their contractors, and the employees of any of the companies mentioned herein.

**Customer** means the company, firm, person, representative or corporation ordering the Service Work.

**Customer Group** means the Customer, the Customer's clients, their Affiliated Companies and their other contractors and subcontractors in as much as the abovementioned any of these are involved in the project for which the Service Work is being performed, and including the employees of any of these companies as mentioned herein.

**DAP** means Delivered at Place under Incoterms 2020.  
**DPU** means Delivered at Place Unload under Incoterms 2020.  
**Equipment** means the Contractor's service Equipment used to carry out the Service Work.

**Force Majeure** means any occurrence beyond the Contractor's control, including but not limited to any strike, lockout, labour dispute, civil unrest or disturbance, any act of God, war, national emergency, storms, pandemic, epidemic, fire and so forth.

**Personnel** means the Contractor's service personnel used to carry out the Service Work.

**Purchase Order** means an individual Purchase Order or other written order or contract including documents issued by the Customer for the procurement of the Contractor's Service Work. Provided that in all cases the Purchase Order as defined herein must necessarily be accepted in writing by the Contractor.

**Service Work** means all work and services to be carried out by the Personnel as specified in the Contract, including the use and operation of the Equipment.

**Site** means any work place where the Service Work is carried out and any place provided by the Customer for the storage of the Equipment during the performance of the Service Work.

**Sub-Contract** means an agreement between the Contractor and any Sub-Contractor.

**Sub-Contractor** means any entity to whom Contractor has subcontracted any part of the Service Work or from which Contractor has purchased any material or services to be incorporated into the Service Work.
3. **Basis of Contract**

The Customer accepts that only the Contract as defined in Clause 2 of these Terms and Conditions shall be the basis for the agreement concerning the Service Work, and that any use of or reference to other general or special terms and conditions by the Customer shall be deemed not to apply.
4. **Prices**

Unless otherwise specified in the Contract, the prices shall be in AUD and do not include GST or other taxes.

Unless otherwise stipulated in the Contract, the agreed rates and prices do not include travel expenses, accommodation, transport or other direct extra costs incurred by the Contractor in connection with the performance of the Services.
5. **Mobilisation of Equipment and Personnel**

The Equipment will be mobilised Ex Works Contractor's address (Incoterms 2020) unless otherwise agreed. Mobilisation of Personnel will be as mutually agreed to and specified in the Contract.
6. **Payment**

The Equipment rates will be charged from mobilisation of the Equipment until the Equipment is returned DAP to the same location (Incoterms 2020) as explicitly instructed by the Contractor. Personnel rates will be charged from the agreed mobilisation date until the agreed demobilisation date or the actual demobilisation date, whichever is the later.

All prices are quoted and payable in AUD. Unless otherwise agreed, the Contractor will submit monthly invoices after the expiry of each month. Payment must be made by the Customer within 30 days from receipt of invoice. In the event of overdue payment, interest will be charged from the due date of the invoice until payment is actually made by the Customer.

In the event that the Customer disputes any amounts invoiced by the Contractor, the Customer shall pay to the Contractor the undisputed portion of the invoice and upon the resolution or determination of the dispute, the Customer shall pay the Contractor the agreed upon balance with the addition of interests in accordance with the preceding paragraph.
7. **Contractor's Responsibilities Related to the Services**

The Contractor will provide Personnel and Equipment for the Service Work based on the information and specifications received from the Customer.

The Contractor shall ensure that all its Personnel are qualified, technically experienced and trained in the use of the Equipment and in all aspects of safety appropriate to the Service Work.

The Contractor shall provide the Equipment specified in the Contract for use by the Personnel. In the event that the Contractor is required to provide final documentation or similar, this will be provided when all other Service Work has been completed. The Contractor shall ensure that the Personnel give priority to safety in order to protect life, health, property and environment and shall cooperate with the Customer for all health and safety and environmental issues. The Contractor shall keep itself informed of, and shall comply with, applicable laws and regulations having jurisdiction over the Service Work.
8. **Customer's Responsibilities Related to the Services**

The Customer shall be responsible for the overall coordination and supervision of the Contractor's Personnel in connection with Service Work at the Customer's Site. The Customer shall obtain all official permits and authorisations required at the Site and within the Customer's area/country in connection with the Service Work and to enable the Contractor's Personnel and Equipment to enter the Site. The Customer shall take adequate and proper measures to store the Equipment and protect it from theft, damage and/or other risks, and the Contractor shall be permitted at all responsible times and at any Site to inspect the Equipment.

Provided that the Customer shall be liable for, and agrees to indemnify and keep indemnified the Contractor and the Contractor

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Group against all loss and liabilities arising out of or in connection with the failure, omission or negligence of the Customer and Customer Group in obtaining the permits required under this Clause. Provided further that the Contractor and the Contractor Group shall be entitled to, and the Customer and Customer Group shall be liable to pay all costs incurred and pertaining to the Customer and Customer Group's obligations under this Clause 8.

### 9. Delay - Mobilisation

Unless otherwise agreed, the following shall apply: If the Contractor finds that it cannot mobilise Personnel and Equipment within the agreed mobilisation time, or if a delay on the Contractor's part seems inevitable, the Contractor shall inform the Customer of this without undue delay, giving the reasons for the delay, and if possible, when the new revised mobilisation time is expected to take place. Following any written notice requesting an extension by the Contractor under this Clause 9, the Contractor shall be entitled to such extension of time for performing the Service Work as reasonably required, and the Customer shall grant such extension without undue delay.

Provided that the Customer indemnifies the Contractor and the Contractor Group against all and any damages, expenses, loss / losses, liability / liabilities or claims by or against the Contractor arising out of or in connection with any delay of mobilisation under this Clause 9, including delay as a result of Force Majeure.

Provided further that the Customer and the Customer Group shall be liable for all and any damages, expenses, loss / losses, liability / liabilities or claims suffered by the Contractor and Contractor Group due to a delay in mobilisation caused by any act or omission of the Customer or Customer Group as the case may be.

### 10. Title and Risk

The Equipment shall remain the property of the Contractor at all times. Risk in the Equipment will pass to Customer when the Equipment is loaded onto the Contractor's truck or any other similar means of transport at the Contractor's address and will remain with Customer until the Equipment is returned DPU to the Contractor's address as stipulated by the Contractor.

The Customer and the Customer Group shall be liable for any and all loss of or damage to the Equipment while under the Customer's risk, however caused, including but not limited to theft, accidents, fire, and so forth. The Customer and Customer Group has no right, title or interest in the Equipment at any point during the duration of Service Work or Contract.

### 11. Service Warranty

The Service Work shall be carried out in accordance with generally accepted techniques and practices used in the industry. The Contractor warrants that it has the necessary competence to carry out the Service Work in a professional manner and in accordance with applicable standards and norms, without giving any warranty, however, that any result envisaged by Customer will be achieved.

The Contractor shall without undue delay correct or redo any Service Work which is defective in nature and not in accordance with the above, at no cost to the Customer, provided that the Contractor has been notified thereof of any such defect by the Customer a minimum of five (5) business days before demobilisation of the Personnel.

The Contractor and the Contractor Group shall in no event be liable for any cost relating to dismantling of the Customer equipment and installation thereof, board and lodging offshore, transportation of Equipment and Personnel to, from and at the Site, lifting operations, extra costs associated with warranty work performed below the water line, or any other such incidental or associated costs.

Provided further that the Customer and Customer Group shall be liable to the extent that it has not advised the Contractor of such defect within the stipulated five (5) business days.

### 12. Quality Assurance and Health, Safety and Environment

The Contractor shall have an implemented and documented quality system in accordance with the requirements of ISO 9001 or equivalent and a system for health, environment and safety. The Customer may conduct audits of such systems of the Contractor and its Sub-contractors. The Contractor shall comply with the Customer's safety regulations when performing Service Work at the Customer Site. If the Contractor is bringing any chemicals or other hazardous substances into the Customer's Site, these shall be labelled as required by Australian legislation.

Data sheets shall be available at the place where the substance is used. The Contractor shall without delay report to the Customer's representative all accidents and near-misses occurred in carrying out the Service Work. The Contractor is obliged to investigate all accidents and near-misses and to implement necessary corrective actions to prevent recurrence. The Contractor shall supply required personal protection equipment for its employees when carrying out the Service Work.

### 13. Audit

The Contractor and its Sub-Contractors shall keep full and accurate records pertaining to the Service Work and shall retain such records for a period of five (5) years after completion of the Service Works. The Customer and its representatives shall have the right to audit these records.

### 14. Insurance

The Contractor shall maintain all necessary insurances for the Service Work as prescribed by national law, including worker's compensation insurance and third party liability insurance.

### 15. Liability - Indemnity

The Contractor shall indemnify and hold harmless the Customer and the Customer Group against any and all claims, losses, costs, damages and expenses in respect of injury to or sickness, disease or death of any person employed by the Contractor and the Contractor Group arising out of or in connection with the Contract. Notwithstanding, the Customer and the Customer Group shall be held liable in all respects for any and all claims, losses, costs, damages and expenses in respect of injury to or sickness, disease or death of any person employed by the Contractor or the Contractor Group arising out of or in connection with the Contract and which are caused by the negligence or breach of statutory duty of the Customer and / or Customer Group, including the failure or omission of the Customer and / or the Customer Group of its obligations under the Contract and these Terms and Conditions.

The Customer shall indemnify and hold harmless the Contractor and the Contractor Group against any and all claims, losses, costs, damages and expenses in respect of injury to or sickness, disease or death of any person employed by the Customer and / or Customer Group arising out of or in connection with the Contract. Notwithstanding, the Contractor and the Contractor Group shall be held liable in all respects for any and all claims, losses, costs, damages and expenses in respect of injury to or sickness, disease or death of any person employed by the Customer or the Customer Group arising out of or in connection with the Contract and which are caused by the negligence or breach of statutory duty of the Contractor and/ or Contractor Group, including the failure or omission of the Contractor and / or the Contractor Group of its obligations under the Contract and these Terms and Conditions.

Except as set forth in Clause 10 - Title and Risk, the Contractor shall indemnify and hold harmless the Customer Group from all claims, losses, costs, damages and expenses in respect of loss or damage to any property of the Contractor and the Contractor Group arising out of or in connection with the Contract. Notwithstanding, the Customer and the Customer Group shall be held liable in all respects for any and all loss or damage to any property of the Contractor and / or Contractor Group arising out of or in connection with the Contract caused by the negligence or breach of statutory

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duty of the Customer and/ or Customer Group, including the failure or omission of the Customer and / or the Customer Group of its obligations under this Contract.

The Customer shall indemnify and hold harmless the Contractor and the Contractor Group from all claims, losses, costs, damages and expenses in respect of loss or damage to any property of the Customer Group arising out of or in connection with the Contract. Notwithstanding, the Contractor and the Contractor Group shall be held liable in all respects for any and all loss or damage to any property of the Customer and / or Customer Group arising out of or in connection with the Contract caused by the negligence or breach of statutory duty of the the Contractor and the Contractor Group, including the failure or omission of the Contractor and the Contractor Group of its obligations under this Contract.

### **16. Pollution**

The Contractor shall be liable for pollution originating from the Equipment, unless such pollution is caused by acts or omissions of the Customer or the Customer Group or the Customer Group's personnel. Save as set forth above, the Customer shall defend, indemnify and hold harmless the Contractor and the Contractor Group from and against all claims, losses, damages, costs, expenses and liabilities in connection with pollution which arise out of or relate directly or indirectly to the Contract and/or the Service Work.

### **17. Consequential Loss**

Subject to Clause 15 above, neither Party shall be liable to the other for any consequential losses or indirect losses, including without limitation, loss of profit, loss of goodwill, loss of revenue or turnover, or loss of opportunity arising out of or in connection with the Contract.

### **18. Force Majeure**

The Contractor shall not be considered in breach of any obligation under the Contract to the extent that fulfilment of the obligation has been prevented by Force Majeure. Force Majeure means any occurrence beyond the Contractor's or the Contractor Group's control, provided that it could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences.

### **19. Cancellation and Termination**

If the Service Work period has a fixed duration neither Party shall be entitled to cancel the Contract before the expiry of that fixed period unless by agreement in writing by both Parties. If the Service Work period does not have a fixed minimum duration either Party may cancel the Contract upon giving notice in writing to the other Party of its intention to cancel the Contract and both Parties shall agree to the cancellation of the Contract under this Clause by mutual agreement in writing.

Either Party shall have the right to terminate this Contract by written notice if the other Party: (i) becomes insolvent or stops its payments, or (ii) is in substantial breach of the Contract.

In the event of cancellation or termination, the Customer shall pay the Contractor for all Service Work properly performed prior and right up to the cancellation or termination.

### **20. Assignment**

Neither Party can assign the Contract to a third party without the prior written consent of the other Party. Such consent shall not unreasonably be withheld.

### **21. Limitation of Liability**

Notwithstanding any of the provisions herein, the Contractor's and the Contractor Group's total liability for breach of Contract shall be limited to the total charges paid by Customer, but shall in no event exceed AU \$1 million.

### **22. Governing Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with Western Australian law. Any dispute between the Parties that cannot be solved amicably shall be settled by court proceedings according to Western Australian law at the Perth District Court, which the Parties accept as their legal venue.