

1. Terms and Conditions

Please read these Terms and Conditions carefully as they specify the basis of the Agreement under which the Goods and Services are provided to the Client by LT Controls. If the Client accepts the Proposal, these Terms and Conditions with the Proposal and any Special Conditions identified in the Proposal will constitute the whole of the Agreement with the Client.

These Terms and Conditions cannot be varied or superseded by any other documentation or communication between LT Controls and the Client unless otherwise agreed in writing by LT Controls.

1. Definitions and Interpretations

In these Terms and Conditions, the following expressions have the following meanings:

- 1.1. **Agreement** means the agreement between LT Controls and the Client comprising of, in decreasing order of priority to the extent of any inconsistency, the Special Conditions (if any) identified in the Proposal or Quotation, the Proposal or Quotation (including any annexures) and these Terms and Conditions;
- 1.2. **Authority** includes any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;
- 1.3. **Business Day** means a day on which banks are generally open for business in the state in which the Services are to be performed excluding a Saturday, Sunday or public holiday;
- 1.4. **Charges** means the charges (including levies) specified in the Proposal or an Invoice for the supply of the Goods and/or provision of the Services;
- 1.5. **Claims** means any claims, demands, debts, accounts, actions, expenses, costs, liens, liabilities and proceedings of any nature whatsoever;
- 1.6. **LT Controls** means LT Controls Pty Ltd (ACN 682 169 893) trading as LT Controls (ABN 39 682 169 893);
- 1.7. **Client** means the entity, including its People, requesting and/or receiving the Services of LT Controls;
- 1.8. **Commencement Date** means the date specified in the Proposal or, if no date is specified, the date which LT Controls notifies to the Client in writing as the date for commencement of the Supply or the date before the Supply is provided to the Client;
- 1.9. **Dispute** means a dispute arising out of or relating to the Agreement, including a dispute as to breach or termination of the Agreement or as to any Claims;
- 1.10. **Equipment** means any of LT Controls' or the Client's equipment used in connection with the Services;
- 1.11. **Force Majeure Event** means any act of God or act, omission or circumstance over which LT Controls could not reasonably have exercised control, including war, sabotage, civil commotion, national emergency, breakdown of plant, machinery or equipment, strike or other labour difficulty (whether or not involving employees of LT Controls);
- 1.12. **Goods** means the goods specified in the Proposal or an Invoice;
- 1.13. **GST** means a tax imposed under GST Law;
- 1.14. **GST Law** has the meaning given in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 1.15. **Intellectual Property** means trademarks, trade names, domain names, logos, get-ups, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;
- 1.16. **Invoice** means an invoice issued by LT Controls for payment of the Charges including any balance of it payable by the Client without demand and recoverable as liquidated debt;
- 1.17. **Law** includes any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise;
- 1.18. **People** include employees, agents, consultants and subcontractors, but LT Controls' People do not include the Client or its People;
- 1.19. **Proposal** means a written proposal (including Quotations) which outlines the scope of work and the Goods and Services that LT Controls will provide to the Client (containing and subject to these Terms and Conditions);
- 1.20. **Purchase Order** means a document issued by the Client, indicating their request and acceptance of the Goods and Services to be provided by LT Controls and/or the Proposal;
- 1.21. **Quotation** means a written quotation, tender, price schedule or other document issued by LT Controls specifying the Charges for the provision of the Goods and Services;

- 1.22. **Roster Hours** means the hours stated in the Agreement or otherwise as agreed in writing between LT Controls and the Client;
- 1.23. **Services** means the services that LT Controls agrees to provide to the Client under the Proposal and/or Purchase Order subject to the terms of the Agreement, including the delivery of the Goods;
- 1.24. **Site** means a site owned and occupied by the Client, any of the Client's clients, agents or contractors to be attended by LT Controls' People in relation to the Supply;
- 1.25. **Site Regulations** means any regulations of general application governing access to, and performance of work at, Site by contractors;
- 1.26. **Supply** means the performance of the Services and Work by LT Controls under the terms of the Agreement;
- 1.27. **Tax** includes any GST, sales tax, levy, charge, impost, duty, fee, deduction, customs duty or any other tax, charge or duty which is assessed by any Authority;
- 1.28. **Timeline** means the timeline for the Supply as agreed between LT Controls and the Client;
- 1.29. **Work** means the work to be performed by LT Controls in accordance with the Proposal and/or Purchase Order;
- 1.30. Words importing singular include the plural and vice versa;
- 1.31. Words importing persons shall include individuals, partnerships, unincorporated and incorporated associations, trusts and companies;
- 1.32. A reference to a Statute Rule or Regulation is a reference to that Statute Rule or Regulation as amended, re-enacted or modified from time to time;
- 1.33. A reference to any party will include their lawful successors and assigns; and
- 1.34. Headings are for convenience only and do not affect the interpretation of the Agreement.

2. LT Controls' Responsibilities

- 2.1. LT Controls will Supply the Goods and Services to the Client in accordance with the Proposal and/or Purchase Order subject to the terms and conditions of the Agreement.

3. The Client's Responsibilities

- 3.1. The Client must ensure compliance with these Terms and Conditions including payment of Invoices rendered from time to time.

4. Binding Agreement

- 4.1. The Agreement is entered into and will be binding on LT Controls and the Client upon the Client's acceptance of the Proposal or LT Controls' acceptance of a Purchase Order. The Client agrees that they will be deemed to have accepted the Proposal if:
 - a) they accept it in writing and communicate that to LT Controls; or
 - b) they take delivery or collect any of the Goods; or
 - c) they receive any Services performed or carried out.
- 4.2. Until the Client has communicated acceptance of the Proposal in writing to LT Controls, LT Controls may for any reason at any time withdraw any Proposal, Quotation or acceptance of any Purchase Order by written notice to the Client.
- 4.3. All Goods and Services as specified in the Proposal at the time of the Proposal may be subject to change or availability. Any Proposal or Quotation is valid for 14 days from the date of the Proposal and subject to change without prior notice.
- 4.4. The date of Agreement is the date LT Controls receives the Client's acceptance of the Proposal or (as applicable) the date that LT Controls communicates to the Client its acceptance of a Purchase Order.
- 4.5. Any error or omission in any Proposal, other document or information issued by LT Controls is subject to correction without liability to them.

5. Term

- 5.1. The Agreement commences on the date determined in accordance with clause 4.1 and, unless otherwise terminated, continues until LT Controls has completed the Proposal and/or Purchase Order.

6. Terms of Payment

- 6.1. Unless otherwise agreed in writing by LT Controls, all prices and Charges are exclusive of:
 - a) GST;
 - b) cost of insurance; and

- c) cost of freight.
- 6.2. The Client must pay to LT Controls Invoices and Charges, plus GST and freight charges (if any), as liquidated debt, without deduction or demand as per the Payment Terms set out in the Proposal unless otherwise agreed in writing between LT Controls and the Client.
- 6.3. Unless otherwise stated in writing, any or all monies payable to LT Controls must be in Australian Dollars.
- 6.4. LT Controls may raise Invoices for progress claims for the Supply irrespective of whether all of the Supply has been completed.
- 6.5. Any other Taxes imposed in relation to the Supply must be paid by the Client in addition to and together with the amount payable for the relevant Supply.
- 6.6. Charges are those applicable as specified in the Proposal and, unless otherwise stated in the Agreement, are subject to adjustment by LT Controls by reason of any:
 - a) variation in the cost of labour, materials and transport;
 - b) variation in exchange rates, customs duty, freight insurance, shipping expenses and cartage;
 - c) variation in the amount of Work required for the Supply due to a variation in specification approved by LT Controls and the Client;
 - d) other charges affecting the cost of production or performance; and
 - e) change to a delivery point.
- 6.7. Unless the Agreement states otherwise, if the Supply is not commenced within 30 days after the Commencement Date (other than due to the fault of LT Controls, after having been given written notice by the Client specifying in detail nature of fault or default), LT Controls may revise the Charges.
- 6.8. All Work will be performed during Roster Hours unless otherwise agreed in writing by LT Controls in which case the Charges will be increased in accordance with the rates set out in the Proposal or otherwise at the rates provided by LT Controls to the Client in writing.
- 6.9. LT Controls may charge the Client, at the rates set out in the Proposal or otherwise at the rates provided by LT Controls to the Client in writing, for any additional Supply which is due to any interruption, delay or the provision of incorrect or insufficient information by the Client or its People or compliance with any statutory direction issued by any of its People.
- 6.10. LT Controls will notify you in writing of any adjustment to the Charges.
- 6.11. Despite clause 6.2 or any other agreement between LT Controls and the Client regarding payment, LT Controls may demand immediate payment in cash or cleared funds of all amounts outstanding (whether then due and payable or not):
 - a) upon the happening of any one or more of the events specified in clause 16, which entitles LT Controls to suspend and/or terminate the Agreement in accordance with clause 15; or
 - b) if LT Controls considers that the Client will or may not be able to settle any Invoice as it falls due.
- 6.12. In the event of default by the Client in the payment of any monies due to LT Controls under the Agreement, LT Controls may, without prejudice to any other remedies available to it:
 - a) withhold the Supply until the Client pays all amounts payable to LT Controls under the Agreement; and
 - b) revoke or amend the Client's credit terms (if any) with LT Controls.
- 6.13. Credit terms may be revoked or amended otherwise at the sole discretion of LT Controls.
- 6.14. The Client must not withhold payment or claim set-off of any amount stipulated in any Invoice. All Invoices must be paid in full notwithstanding the Client may have a Claim.
- 6.15. If the Client does not approve an Invoice, they must advise LT Controls in writing stating the amount of the payment (if any) which is, in their opinion, payable to LT Controls and the reason for any difference within five Business Days after receipt of the Invoice.
- 6.16. LT Controls and the Client must take all reasonable and necessary steps to resolve any disputes in relation to an Invoice as soon as practicable, and if they are unable to resolve the disputes within five Business Days from the date on which the Client issues written advice, the matter may be treated as a Dispute under clause 18.
- 6.17. On determination of the amount properly payable, the Client must pay to LT Controls the difference (if any) and interest on such amount in accordance with clause 6.18.
- 6.18. If the Client does not make a payment or part payment due under the Agreement, LT Controls may charge and the Client shall pay interest on all overdue amounts at the Default Interest Rate, as prescribed by the Queensland Law Society, from time to time, and the parties agree that such interest is not a penalty but is a true measure of the damages incurred by LT Controls as a result of late payment by the Client.

7. Goods

- 7.1. LT Controls will supply the Goods to the Client subject to the Agreement.
- 7.2. The Client will advise the delivery point to LT Controls in writing prior to the delivery date. If no delivery point is advised, it will be taken as the Client's last known delivery address or one of its trading premises.
- 7.3. Risk in the Goods passes to the Client upon despatch of the Goods by its suppliers or agents in accordance with clause 7.4.
- 7.4. Despatch will be taken to have occurred at the time when the freight consignment note for the Goods is scanned by the courier or when the Goods are collected by or on behalf of the Client.
- 7.5. LT Controls will not be liable for any Claim arising from or in connection to any loss, deterioration of or damage to the Goods under any circumstance.
- 7.6. Any delivery date provided is an estimate only and LT Controls will not be liable to the Client for any Claim arising from late or non-delivery of the Goods. Without limiting the preceding sentence, any delivery date requested by the Client must not be earlier than any delivery lead time made known to the Client by LT Controls.
- 7.7. LT Controls may deliver any Goods by instalments and each instalment will be deemed to be sold by LT Controls to the Client under a separate Agreement. Failure of LT Controls to deliver any instalment will not entitle the Client to cancel the balance of the instalments. If the Client defaults in payment of any instalment, LT Controls may elect to treat the default as a breach of the Agreement relating to each other instalment.
- 7.8. Title in the Goods does not pass to the Client until they have paid for them in full in accordance with the Agreement.
- 7.9. The Client is responsible for inspecting all Goods delivered for shortages and/or damages.
- 7.10. The Client must notify LT Controls within seven days of delivery of any short supply or damaged Goods. The Client must comply with all instructions from LT Controls for the return of any Goods.
- 7.11. Only Goods not in proper working order may be returned and the Client will rely upon the warranties of their suppliers or manufacturers, not LT Controls, for repairs or replacement, and not make any Claim against LT Controls.
- 7.12. If Goods are found to be non-faulty, LT Controls may charge the Client a service fee of at least \$225, plus GST and outlays incurred, in each instance.
- 7.13. Goods returned for credit will not be accepted without LT Controls' prior written consent. The Client may be charged a 15% restocking fee.
- 7.14. Only Goods in a complete format with unmarked packaging and included documentation are eligible to a return for credit.
- 7.15. LT Controls will use reasonable endeavours to ensure the Client receives the full benefit of all warranties provided by any suppliers or manufacturers of any Goods but, except as otherwise expressly stated in the Agreement, does not make any warranties or representations in relation to the Goods in any respect.

8. Services

- 8.1. LT Controls will provide the Services to the Client subject to the Agreement.
- 8.2. The Services shall be performed at the place of work of LT Controls, the Client's Site or any other location that LT Controls deems appropriate.
- 8.3. LT Controls may refuse to provide any part or all of the Services if, in its reasonable opinion, providing the relevant part or all of the Services may present a safety hazard for any person involved in providing the Services.
- 8.4. Any times for the performance of the Services made known to, or requested by, the Client (whether by way of the Proposal or otherwise) are estimates only and LT Controls will not be liable for any Claim for late or non-performance.
- 8.5. If:
 - a) LT Controls or its People are ready to perform the Services in accordance with the Timeline, but the Client is unable or unwilling to allow them to commence performance of the Services; or
 - b) the performance of the Services is delayed or suspended for any reason other than the default of LT Controls or any of its People,the Client agrees that LT Controls may issue and charge the Client with an Invoice for the reasonable costs and expenses of the delay or suspension.

- 8.6. The Client must not, during the Term, engage any third party to perform services equivalent to the Services (or any part of the Services) nor perform those services themselves except:
- a) with LT Controls' prior written consent; or
 - b) subject to clause 8.7, the Client is satisfied, acting reasonably and after consulting with LT Controls, that, for reasons which do not constitute a breach of clause 16, LT Controls is unable to perform the relevant Services in accordance with the Agreement.
- 8.7. If clause 8.6 applies, the Client may perform, or engage a third party to perform, such services only to the extent that LT Controls agrees in writing that they are unable to perform the relevant Services in accordance with the Agreement.

9. Variations to the Work

- 9.1. The Client must not:
- a) vary the scope of the Work without prior written consent of LT Controls in its sole discretion; or
 - b) require LT Controls to do any Work or perform any Services outside the scope of the Proposal and/or Purchase Order
- unless the Client has in writing:
- c) provided reasonable notice to LT Controls of their intention to vary the Work;
 - d) disclosed to LT Controls, in relation to the proposed scope of the Work as varied, the matters set out in clauses 9.1 (a) and 9.1 (b); and
 - e) agreed to pay LT Controls all fees and costs for the variation.
- 9.2. Nothing done under this clause 9 limits or relieves the Client of their obligations under any other provisions of the Agreement.

10. Occupational Health and Safety

- 10.1. LT Controls and the Client must at all times comply with its own occupational health and safety obligations under all applicable Laws.
- 10.2. The Client must:
- a) notify LT Controls immediately of any change to their policies in relation to occupational health, safety and environment including the Site Regulations;
 - b) provide LT Controls and its People with such access to its Site and information as LT Controls reasonably requests in relation to LT Controls' compliance with its occupational health and safety obligations in relation to the Agreement.

11. Intellectual Property

- 11.1. Notwithstanding any other provisions of the Agreement, and unless otherwise agreed in writing prior to entry into the Agreement, all Intellectual Property rights arising from or developed in the course of LT Controls performing its obligations under the Agreement will vest or remain the sole and exclusive property of LT Controls for its sole and exclusive and unrestricted use and benefit. The Client must not make any Claim or exercise any rights or use any aspect of rights subsisting in such Intellectual Property without LT Controls' prior written consent, which may be withheld in its sole discretion. Use of any rights subsisting in such Intellectual Property by the Client is strictly on the basis of non-exclusive licence granted to the Client by LT Controls, which licence ends when the Client is in breach or default under the Agreement.

12. Liability

- 12.1. The Client is solely responsible for any Claims arising as a result of or in connection with their use of the Goods and Services other than in accordance with any specification or instruction provided by LT Controls' People in writing to the Client in relation to those Goods and Services.
- 12.2. Except as otherwise provided in the Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Supply are excluded to the fullest extent permitted by Law.
- 12.3. Despite any other provision of the Agreement, the Client agrees that LT Controls' liability to them (including any party claiming through them) for any Claim for loss or damages incurred in connection with the Agreement for breach of contract (including under any indemnity), tort (including negligence) and for any other Claim whether under statute, in equity, at law or otherwise will be as follows:
- a) if LT Controls is in breach of the Agreement, LT Controls' liability is strictly limited to:

- i) for Goods, the replacement of the defective Goods or the repair of the defective Goods or the repayment (or allowance) of the Invoice price of the defective Goods, at LT Controls' option;
 - ii) for Services, the supply of the Services again or the payment of the costs of having the Services supplied again, at LT Controls option; or
 - b) where the loss or damage is not covered by clause 12.3 (a), LT Controls' maximum liability to the Client (including any party claiming through them) will be limited to an amount equivalent to the proceeds actually recovered by LT Controls under any policy of insurance held by LT Controls in relation to the loss or damage.
- 12.4. Other than wilful or gross negligence on the part of LT Controls, the Client shall be liable, and must always indemnify LT Controls, for any loss or damages LT Controls and/or its People suffer and/or may suffer in connection with the delivery or performance of the Agreement in attendances at any Site.
- 12.5. Prior to making any Claim against LT Controls or its People, the Client must give them prior written notice of matters in issue or to be fixed and reasonable time to remedy or fix them of not less than 14 days. If this clause is not complied, the Client undertakes not to claim any costs, including professional fees, against LT Controls, in connection with the failure to comply with this clause.

13. Indemnities and Insurance

- 13.1. The Client must indemnify LT Controls from all Claims for:
- a) injury to or death of any person (including LT Controls' People or the Client's People) or damage to or destruction of any property or equipment caused by any negligent acts or omission by the Client or its People or a breach of the Agreement by the Client;
 - b) failure by the Client or its People or LT Controls People under direction of the Client or its People to comply with any Law; and
 - c) without limiting clauses 13.1 (a) and 13.1 (b), breach by the Client or its People, of any of the Client's obligations under the Agreement, or any negligent act or omission by the Client or its People relating to the performance of the Agreement.
- 13.2. The Client's liability to indemnify LT Controls pursuant to clause 13.1 is reduced to the extent any act or omission of LT Controls caused or contributed to the injury, damage or loss.
- 13.3. The Client must keep current at all times during the provision of the Supply:
- a) a policy of public risk insurance applicable to the Client's Site for an amount of not less than \$10 million, or such higher amount as LT Controls may reasonably require, in respect of any one single action or event or such higher amount as LT Controls may from time to time reasonably require;
 - b) workers' compensation insurance in accordance with all relevant Laws; and
 - c) a policy of insurance covering LT Controls' Equipment, at all times while at the Client's Site, for its full replacement value against loss, damage, theft and destruction.
- 13.4. At all times when the Goods are at the Client's risk or title does not pass to the Client until LT Controls receives payment (including while the Goods are in transit), the Client must effect and maintain insurance covering loss of, or damage to, the Goods for their full replacement value.

14. Confidentiality

- 14.1. The Client must treat, and require its employees, agents and subcontractors to treat, all confidential information of LT Controls given in connection with the Agreement confidential, including that which is identified as having, or marked with, a classification indicating its confidentiality according to that classification. This clause does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of this clause.

15. Termination

- 15.1. The Agreement shall terminate:
- a) upon completion of the Services and payment of all monies owing by the Client under the Agreement; or
 - b) upon agreement between LT Controls and the Client that has been reduced to writing and signed by both parties; or
 - c) at the discretion of LT Controls, including but not limited to, if the Client commits any act of bankruptcy, enters into any composition with its creditors or does any act which would render them liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation of the Client or if a receiver, statutory manager or similar functionary is appointed in respect of its assets.

15.2. If the Agreement is terminated in accordance with clause 15.1 (15.1.b), the Client shall pay for the Services or part of the Services that was provided by LT Controls prior to termination.

16. Suspension

16.1. If the Client breaches the Agreement, LT Controls may suspend the Supply until the breach or default is rectified to LT Controls' satisfaction.

16.2. The exercise of LT Controls' right of suspension under clause 16.1 does not restrict or prevent LT Controls from exercising its rights of termination under clause 15.

17. Force Majeure

17.1. LT Controls:

- a) will not be liable for any delay or failure to provide the Supply if such failure or delay is due to a Force Majeure Event; and
- b) may terminate the Agreement by written notice to the Client if the Force Majeure Event continues for more than 30 consecutive days.

18. Dispute Resolution

18.1. Neither LT Controls nor the Client may commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 18 except where they seek urgent interlocutory relief.

18.2. If LT Controls or the Client claims that a Dispute has arisen under or in relation to the Agreement, they must give written notice to the other party specifying the nature of the Dispute.

18.3. On receipt of that notice, LT Controls and the Client must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.

18.4. If LT Controls and the Client do not agree within seven days of receipt of the notice (or any further period agreed in writing by them) as to the:

- a) dispute resolution technique and procedures to be adopted; or
 - b) timeline for all steps in those procedures; or
 - c) selection and compensation of the independent person required for such technique,
- The Dispute will be referred to mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.

18.5. LT Controls and the Client acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 18 is to attempt to settle the Dispute concerned. They may not use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 18 for any purpose other than in an attempt to settle the Dispute concerned.

18.6. Unless otherwise agreed between LT Controls and the Client, they must continue to perform their obligations under the Agreement despite the existence of a Dispute.

19. Joint and Several Liability

19.1. If the Client comprises two or more persons, each of them is jointly and severally liable for obligations and liabilities under the Agreement.

20. Assignment and Subcontracting

20.1. The Client must not assign or encumber a right or interest under the Agreement without the prior written consent of LT Controls, which may be withheld in its sole discretion.

20.2. LT Controls may subcontract, including its rights and obligations, from time to time, any part or all of the Supply without prior agreement or written consent of the Client or its People.

21. No Waiver

21.1. LT Controls' or the Client's failure or delay exercising a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.

22. Severability

- 22.1. If any provision of the Agreement or the application thereof is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

23. Governing Law and Jurisdiction

- 23.1. The Agreement is governed by the Law applicable in Queensland and the Commonwealth of Australia. The parties submit to the exclusive jurisdictions of the courts of Queensland and the Commonwealth of Australia.

24. Restraint

- 24.1. The Client acknowledges that LT Controls has invested substantial time and money in the recruitment and training of its employees and staff and will suffer loss and adversely impact the reputation, goodwill and profitability of LT Controls if its staff or employees leave or terminate their employment or relationship with LT Controls as a result of their deployment in connection with the Agreement.
- 24.2. While the Agreement is in force and until that date being six months after the termination of the Agreement, the Client must not directly or indirectly solicit or offer any work or employment to any staff or employee of LT Controls without its prior written consent, which may be withheld in its absolute discretion.
- 24.3. The Client agrees that these provisions are fair and reasonable. If the Client breaches any of these provisions, LT Controls may recover loss and damage and costs assessed on a full indemnity basis.