

TERMS AND CONDITIONS

FOCUS ENGINEERING

A Division of Valorem Engineering Pty Ltd (ACN 408 296 156)

These Terms and Conditions together with any quotation issued by **Focus Engineering** (Quotation) and any purchase order issued by the Client (Purchase Order) form a legally binding agreement (Agreement).

Focus Engineering is a trading division of **Valorem Engineering Pty Ltd (ACN 408 296 156)**.

References in this Agreement to **Focus Engineering, we, us, or our** mean **Valorem Engineering Pty Ltd trading as Focus Engineering**.

This Agreement governs the terms of Focus Engineering's provision of goods (**Goods**) and/or services (**Services**) to You as described in the Quotation. By placing a Purchase Order following receipt of the Quotation, you acknowledge, accept and agree that You have read the terms in this Agreement and are bound by the provisions herein following Focus Engineering's acceptance of any Purchase Order.

Upon providing written acceptance of any Purchase Order, Focus Engineering agree to provide You with the Goods and/or Services as outlined in the Quotation and Purchase Order on the terms of this Agreement in consideration for the fee as stated in the Agreement (**Fee**).

1.0 TERMS OF AGREEMENT:

- 1.1 The Quotation for the Goods and/or Services is valid for a period of fourteen days (14) days from the date on the Quotation, unless revoked by Focus Engineering. During this period, the Client may make an offer upon the basis of the Quotation by placing a Purchase Order with Focus Engineering.
Focus Engineering acceptance of the Quotation and the Client's offer in the Purchase Order shall be made subject to this Agreement, except in so far as Focus Engineering expressly alters them. This Agreement shall prevail over all terms and conditions concerning the Client's order to the extent of any inconsistency.
- 1.2 This Agreement consists of:
 - (i) these Terms and Conditions; and
 - (ii) the provision of Goods and/or Services as set out in the Quotation and the Purchase Order, after Focus Engineering accept the Purchase Order in writing.
- 1.3 Focus Engineering will provide the Client with the Goods and/or Services outlined in the Purchase Order in accordance with the terms of this Agreement.
- 1.4 If particulars are not stated within the description of the Quotation and the subsequently accepted Purchase Order, those particulars are not included in the Goods and/or Services which are to be provided. It is the Client's responsibility to check the details of the Quotation and Purchase Order are correct.
- 1.5 Focus Engineering reserves the right to decline the Purchase Orders made by the Client after issuing a Quotation.
- 1.6 Focus Engineering will commence providing the Goods and/or Services to the Client after it accepts the Purchase Order in writing and will cease providing the Goods and/or Services to the Client on completion of the Services or the provision of the Goods, or if this Agreement is otherwise terminated by any means.

2.0 CLIENT'S OBLIGATIONS

- 2.1 The Client must, as soon as practicable, make available to the Focus Engineering all information, documents and other particulars relating to the Quotation and Purchase Order.
- 2.2 The Client must, as soon as practicable, arrange for all approvals, authorities, licenses and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services in the Purchase Order to be so obtained.
- 2.3 The Client must appoint a representative in relation to the provision of Goods and/or Services under the Purchase Order. The Client agrees that its representative must have authority to act on behalf of the Client for all purposes in connection with this Agreement.
- 2.4 If the Client becomes aware of any matter which may change the scope or timing of the Services under the Purchase Order, then the Client's Representative will give written notice to Focus Engineering.
- 2.5 The Client warrants the correctness of all the data and information that is provided to Focus Engineering for use in any design or selection performed by Focus Engineering. It is the Client's responsibility to verify the correctness of such data or information prior to supplying it to Focus Engineering for use, and the Client absolves Focus Engineering from any liability for any defects in the Goods or their performance caused directly or indirectly by incorrect data or information.
- 2.6 The Client warrants and represents that it is not insolvent that there are no reasonable grounds to suspect that it will become insolvent upon entering into this Agreement. Where the Client becomes insolvent or reasonably believes that it will become insolvent, the Client agrees to notify Focus Engineering as soon as reasonably practicable.

3.0 VARIATIONS:

- 3.1 If works requested by the Client have not been detailed within Focus Engineering's Quotation and Purchase Order, then the works are not included, and an additional cost will be incurred for the provision of any additional Goods and/or Services. If the Client and Focus Engineering agree to vary Goods and/or Services as outlined in the Quotation and the Purchase Order to include additional Goods and/or Services, Focus Engineering reserves the right to vary its Fees and the Client agrees to pay the amount agreed between the Client and Focus Engineering prior to the provision of the varied Goods and/or Services. This Agreement will be deemed to be varied in the event that Focus Engineering are required to undertake additional or different work outside of the scope of works detailed within the Quotation and subsequent Purchase Order.
- 3.2 The fee for the additional work is subject to cost and availability of materials. Focus Engineering then reserves the right to adjust the Fee if the cost of materials, equipment and/or labour is increased.
- 3.3 If the Client and Focus Engineering agree to vary Goods and/or Services under clause 3.1, Focus Engineering reserves the right to amend the timeframe in which the varied Goods and/or Services are deliverable.
- 3.4 If Focus Engineering's additional charges have not been agreed, then the Client agrees that Focus Engineering is under no obligation to provide the varied Goods and/or Services.

4.0 PAYMENT:

- 4.1 Unless otherwise agreed in writing, upon Focus Engineering's acceptance of the Purchase Order, the commencement of the Services and the provision of Goods outlined in the Purchase Order will be on a cash-on-delivery basis requiring:
- (i) a deposit of 50% of the total Fee inclusive of the GST amount (including where the Client is a verified account holder with Focus Engineering). This amount **MUST** be paid for work is to commence; and
 - (ii) a final payment of the remaining 50% of the total Fee inclusive of GST is required before the job is released.
- 4.2 Focus Engineering approves an account in writing, in which case such payment of the Fee will be to Focus Engineering within thirty (30) days from the issue date of invoice or when Goods are delivered, or Services are completed unless Focus Engineering states otherwise in writing.
- 4.3 Where delivery of Goods cannot be made for whatever reason, payment of the Fee will be due at the end of the month following that in which manufacture was completed.
- 4.4 Focus Engineering reserves the right to make progressive monthly claims for payment of the Fee.
- 4.5 No retention of monies is allowed under this Quotation unless specifically negotiated with Focus Engineering.
- 4.6 If this Agreement is terminated for any reason other than for breach of this Agreement by Focus Engineering, Focus Engineering is entitled to the pro rata payment of the Fee for the Services carried out and the Goods provided at the time of termination and any consequential costs and expenses incurred as a result of the termination for the period up to and including the date of termination.

5.0 GST:

- 5.1 Except for terms which are defined in this Agreement, capitalised expressions set out in this clause bear the same meaning as those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 5.2 Unless this Agreement or the Quotation provides otherwise, and subject to this clause, the Fee outlined in the Quotation or that may otherwise be provided for under the Agreement is exclusive of GST. If a party makes a taxable supply in connection with this Agreement for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.
- 5.3 To the extent that one party is required to reimburse another party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- 5.4 To the extent that any consideration payable to a party under this Agreement is determined by reference to another amount, the GST exclusive amount of the other amount must be used.

6.0 INTELLECTUAL PROPERTY

- 6.1 The ownership of both parties' intellectual property rights in existence prior to the commencement of this Agreement are unaffected by any term of this Agreement.
- 6.2 The Client agrees that Focus Engineering retains ownership of all intellectual property rights in respect of the Goods and/or Services including any copyright, patent, trade secrets or trademarks. The Client agrees not to disclose any discovery, design, procedure, invention or improvement in procedure made known to the Client by Focus Engineering in relation to the Goods and/or Services.
- 6.3 The Client confirms that at all times it is and was understood and agreed that from the moment of creation of any materials or deliverables, Focus Engineering would own all rights in respect of the materials or deliverables arising under the *Copyright Act 1968* (Cth).
- 6.4 The Client must have a licence to use the documents referred to in clause 6.3, however, the Client must not use nor make copies of such documents in connection with any work unless express approval is given in advance by Focus Engineering.
- 6.5 If, during the course of providing the Services and/or Goods, Focus Engineering develops, discovers or first reduces to practice a concept, product or process which is capable of being a *Designs Act 2003* (Cth) design and patent, then such concept, product or process must be and remain the property of Focus Engineering and the Client must not use, infringe or otherwise appropriate the same without first obtaining the written consent of Focus Engineering.
- 6.6 In consideration for payment of the Fee outlined in the Quotation (or as varied under clause 3 of this Agreement), Focus Engineering grants the Client a non-exclusive, perpetual licence to use the deliverables only for the purpose as outlined in the Quotation. The Client agrees that they cannot license, transfer or sell the materials or deliverables to a third party, unless agreed by Valorem Engineering in writing.

7.0 DELIVERY, RISK AND TITLE

- 7.1 Focus Engineering will use all reasonable endeavours to despatch Goods by the due date, but do not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond Focus Engineering's reasonable control, including, for example, due to failures in supply or delays caused by third parties, such as delivery companies or manufacturers.
- 7.2 The Client must be available to accept the Goods at the nominated delivery address during business hours unless otherwise arranged.
- 7.3 Delivery is deemed to take place when the Goods are delivered to the Client's nominated address, whereupon risks of loss, breakage and all damage and all other risks pass to the Client. Nothing in this clause 7.3 will affect title to the Goods.
- 7.4 The Client will ensure that Goods are adequately insured from the time of delivery under clause 7.3.
- 7.5 Until Focus Engineering has received full payment in cleared funds for any moneys due to Focus Engineering by the Client on any account or for any reason:
- (i) title to, and property in, Goods supplied to the Client remain vested in Focus Engineering and does not pass to the Client;
 - (ii) The Client must hold those Goods as fiduciary bailee and agent for Focus Engineering and must not sell them;
 - (iii) The Client must keep those Goods separate from other goods and maintain the Goods and their labelling and packaging intact;
 - (iv) Where the Client sells the Goods in breach of this Agreement, the Client is required to hold the proceeds of any sale of those Goods on trust for Focus Engineering in a separate account (however any failure to do so will not affect the Client's obligation to deal with the proceeds as trustee and remit them to Focus Engineering);

- (v) Focus Engineering may, without prior notice, enter into any premises where it reasonably suspects those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Focus Engineering) and for this purpose, the Client hereby irrevocably authorises and directs Focus Engineering (and its employees and agents) to enter into such premises as its duly authorised agent and the Client hereby indemnifies and holds Focus Engineering harmless from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal; and
- (vi) The Client irrevocably appoint Focus Engineering as its attorney to do anything Focus Engineering considers necessary in order to enter such premises and repossess the Goods as contemplated by this clause 7.5.

8.0 LIABILITY:

- 8.1 Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 8.2 The Client indemnifies and holds Focus Engineering harmless in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to the Client or any third party in relation to the Client.
- 8.3 The Client indemnifies and holds Focus Engineering harmless for any allegation or claim for loss or damage by the Client or a third party where Focus Engineering have failed to meet any delivery date or cancels or suspends the supply of Goods and/or Services.
- 8.4 Except as otherwise expressly stated in this Agreement, Focus Engineering are not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of Focus Engineering) which is suffered or incurred by the Client in connection with:
 - (i) Goods and/or Services provided to the Client;
 - (ii) this Agreement;
 - (iii) the non-availability of Goods and/or Services for any reason;
 - (iv) any act or omission of Ours or the provision of inaccurate, incomplete or incorrect information by the Client, or
 - (v) for any other reason whatsoever.
- 8.5 To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause 8.4 does not apply to that liability and to Focus Engineering's liability for any breach of that condition or warranty is limited to Focus Engineering doing any one or more of the following (at its election):
 - (i) replacing the Goods or supplying equivalent Goods and/or Services;
 - (ii) repairing the Goods;
 - (iii) paying the cost of replacing the Goods or acquiring equivalent Goods and/or Services; or
 - (iv) paying the cost of having the Goods repaired.
- 8.6 Nothing in this Agreement is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.
- 8.7 If any provision contained in the Agreement is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Agreement.

9.0 WARRANTY:

- 9.1 The Goods provided to the Client in line with the Quotation and Purchase Order are warranted by Focus Engineering for a period of three (3) months from the date of delivery against any defect which has arisen solely from faulty materials or workmanship. The warranty does not extend to any other matters whatsoever, including but not limited to mechanical failure and/or loss of performance of the Goods misuse or other abnormal conditions due directly or in-directly to circumstances which are out of Focus Engineering's control.
- 9.2 This warranty is limited to the replacement or repair of the faulty Goods at the factory in which it was made. Focus Engineering shall have the option to repair or replace the Goods. The warranty does not cover any other matters whatsoever, including but not limited:
 - (i) the cost of transporting the Goods to and from the factory for repair;
 - (ii) the cost of removing the Goods from any machine or building in which they are installed and/or replacing them therein; and
 - (iii) any damage to other property which may have occurred due to the failure of the faulty Goods.
- 9.3 This warranty is invalidated if any other person or company carries out subsequent work on the faulty Goods.
- 9.4 Notice in writing of any claim under this warranty must be given to Focus Engineering with full particulars thereof within seven (7) days of the defect becoming apparent. If such notice is not given within this period, the Client may not claim upon the warranty for that defect.
- 9.5 Focus Engineering shall not be liable to the Client for the expenses of repair or replacement of the faulty Goods incurred without Focus Engineering authority.
- 9.6 Except as provided herein, all express and implied warranties, guaranties, or conditions under statute of general law as to merchantability, descriptions, quality, suitability, or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and Focus Engineering shall not be liable for:
 - (i) physical or financial injury, loss, or damage;
 - (ii) to give the Client any contribution or indemnity; or
 - (iii) for consequential loss or damage of any kind,
 arising out of the supply, layout, assembly, installation, operation or defects of the Goods or arising out of Focus Engineering's negligence or that of its employees and agents or in any way whatsoever.

- 9.7 Focus Engineering's liability for a breach of condition or warranty under the *Competition and Consumer Act 2010* (Cth) is limited to:
- (i) in the case of Goods:
 - (a) the replacement of the Goods or the supply of equivalent Goods; or
 - (b) the repair of the Goods, and
 - (ii) in the case of Services, the supplying of the Service again.

10.0 DEFAULT

- 10.1 The Client will be in default if the Client does not pay Focus Engineering when the Fee, or any other monies owed to Focus Engineering are due for payment or fail to comply with any other obligation under this Agreement.
- 10.2 If the Client is in default under this Agreement, Focus Engineering may send the Client a default notice. The notice will tell the Client what the default is and what the Client is required to do to correct the default. The Client will have 10 business days to rectify the default unless Focus Engineering advises the Client otherwise in writing.
- 10.3 If the Client defaults in payment of the Fee, the Client shall be liable for all expenses incurred by Focus Engineering in recovering monies due, inclusive of solicitor's charges, debt collection fees and disbursement, any cost, or charges in relation to security documents as well as interest as the rate under section 32 of the *Supreme Court Act 1935 (WA)* up to and including the date on which the debt is paid in full.
- 10.4 The Client agrees to pay on default all costs and expenses incurred where Valorem Engineering exercises its rights of recovery from the Client and the Client indemnifies Focus Engineering against any losses resulting from the default.

11.0 DISPUTE DETERMINATION

- 11.1 Except where a party seeks urgent interlocutory relief, if a dispute arises in relation to the rights and obligations of the parties under this Agreement (**Dispute**), the parties must follow the procedures set out in this clause 11 before escalating the Dispute to litigation or arbitration.
- 11.2 The dispute resolution procedures in this clause will arise upon a party notifying the other party in writing (providing reasonable details) as to the existence and nature of the Dispute and setting out the reasons for its dissatisfaction or claim of breach of the Agreement (**Dispute Notice**).
- 11.3 The parties must use their best endeavours to settle the Dispute within 10 Business Days after service and receipt of a Dispute Notice. If the Dispute remains unresolved after this time, the parties must authorise a person or persons holding the required level of authority to meet as soon as practicable to attempt to resolve the Dispute.
- 11.4 If the Dispute remains unresolved after the procedures in clause 11.3 have been completed, the parties agree to use their best endeavours to settle the Dispute by mediation administered by a mediator on the following basis:
- (i) parties must use their best endeavours to agree on the appointment of a mediator within 5 Business Days, failing which the parties agree to the President of the Law Society of Western Australia appointing the mediator;
 - (ii) the costs of the mediation and the mediator will be split equally between the parties to the Dispute;
 - (iii) parties must conduct the mediation as expeditiously as possible; and
 - (iv) the mediation will be held in Perth, Western Australia in accordance with the laws governing this Agreement.

12.0 TERMINATION

- 12.1 This Agreement will terminate upon completion of the Services or the provision of Goods to the Client and the final payment of the Fees to Focus Engineering which are outlined in the Quotation and the Purchase Order or as varied by agreement of the parties in writing.
- 12.2 Notwithstanding any other clause in this agreement, Focus Engineering may terminate this agreement at any time by providing the Client with 30 days' written notice.
- 12.3 Upon termination of this Agreement, the Client must promptly deliver to Focus Engineering all confidential information and copies of any materials or deliverables that Focus Engineering has provided to the Client during the course of this Agreement.

13.0 CANCELLATION CHARGE:

- 13.1 Except where the Client has a statutory right of termination, Purchase Orders accepted by the Focus Engineering may not be cancelled either wholly or in part without the consent in writing of Focus Engineering.
- 13.2 If Focus Engineering consents to any cancellation, Focus Engineering reserves the right to charge the Client for any cancellation costs. These shall include all costs incurred by Focus Engineering because of the cancellation whether within Focus Engineering own manufacturing operations or due to other suppliers of Goods and/or Services.

14.0 FORCE MAJEURE:

- 14.1 An Event of Force Majeure is an event or circumstance which is beyond the control and without the fault or negligence of Focus Engineering and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:
- (i) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
 - (ii) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity;
 - (iii) strikes or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers, and which affect an essential portion of the works, but excluding any industrial dispute which is specific to the performance of the Services or this Agreement;
 - (iv) any time delays and/or geographical lockdowns and/or physical limitations events and/or labour and raw or building material availability arising from Coronavirus; and
 - (v) any other circumstances beyond the control of the Focus Engineering and which could not have been reasonably foreseen by a reasonably prudent and experienced provider of the Goods and/or Services.
- 14.2 If due to an Event of Force Majeure, Focus Engineering is unable to perform in whole or in part so any of its obligations under the Purchase Order and this Agreement, Focus Engineering shall be relieved of that obligation under the Purchase Order and this Agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Client in respect of such inability.

15.0 GENERAL

- 15.1 Notices must be in writing and be sent by Express or Registered Post with delivery confirmation to the address provided by the parties' representatives in writing or by facsimile transmission or email with receipt confirmation.
- 15.2 The law of Western Australia governs this Agreement. The Parties submit to the exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia.