

ESG+F TERMS AND CONDITIONS OF ENGAGEMENT

October 2022

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Following are the Terms and Conditions of Engagement under which ESG-F Pty Ltd will carry out the work outlined in the Letter of Engagement.

TERMS AND CONDITIONS

1. The Consultant ("ESG+F") will provide the Client with the services set out in the Letter of Engagement together with any other services as may be agreed in writing between the parties from time to time (the "Services").
2. In performing the Services ESG+F will ensure that the Services are provided properly and carefully, in a business like and professional manner, and with skill, care and due diligence.
3. Where the Services will be performed at places reasonably required by the Client, the Client must provide reasonable access to allow ESG+F to perform the Services in accordance with this Agreement.
4. The Client will, at its own cost, promptly make available to ESG+F all information, documents, personnel and equipment necessary for ESG+F to carry out the Services as expressly set out in the Letter of Engagement. ESG+F is entitled to rely on such information, documents and other particulars as are provided by the Client pursuant to or in connection with the Letter of Engagement.
5. The Client shall pay to ESG+F:
 - a. the Fee and the Reimbursable Expenses as set out in the Letter of Engagement together with such other amounts in respect of other Services agreed to be provided;
 - b. reasonable adjustments to the Fee and the Reimbursable Expenses to reflect the additional costs, expenses, liabilities, losses or other amounts incurred or suffered by ESG+F in the performance of the Services and arising out of or in connection with any event or matter beyond ESG+F's control; and
 - c. to the extent that amounts payable under this Agreement are not expressed to be GST inclusive, an additional amount for the GST incurred by ESG+F in relation to the supply of the Services ("GST").
6. The Client must pay to ESG+F, without set-off or deduction:
 - a. the amount payable under this Agreement for the Services provided during the relevant period, within 15 days of receiving ESG+F's properly rendered invoice; and
 - b. the GST payable under this Agreement for the Services provided during the relevant period, within 15 days of receiving a valid tax invoice.
7. If the Client does not pay ESG+F in accordance with this Agreement then, without prejudice to any other rights or remedies ESG+F may have, interest will be payable from 30 days of the date of invoice until payment at a rate of 1.5% per month. The Client is responsible for any costs incurred in recouping this debt (i.e., debt collection costs, legal fees).
8. To the maximum extent permitted by law:
 - a. subject to paragraphs (b), (c) and (d) below, ESG+F's liability to the Client arising out of or in connection with this Agreement (including the performance or non-performance of the Services), whether under the law of contract, negligence, in tort, in equity, under statute or otherwise, shall be limited in aggregate to three times the value of the Fees (exclusive of GST and disbursements);
 - b. ESG+F is not liable to the Client in respect of any indirect, consequential or special losses (including but not limited to loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement);
 - c. ESG+F shall be deemed to have been discharged from all liability in respect of the Services whether under contract, negligence, in tort, in equity, under statute or otherwise, at the expiration of the period specified in the Letter of Engagement, or if no date is specified, on the expiration of 3 years from the completion of the Services;
 - d. if, and to the extent that, any of this clause is void as a result of section 68 of the *Trade Practices Act 1974* (Cth), then ESG+F's liability for a breach of a condition or warranty is limited to the supplying of the relevant Services again or the payment of the cost of having the Services supplied again.
9. Subject to the Client complying with its obligations under this Agreement, the intellectual property rights and copyrights of all hard and soft copies of data records and reports provided by ESG+F will be the property of the Client. Any knowledge and software developed by and used by ESG+F in preparing hard and soft copy reports and records will remain the intellectual property of ESG+F.
10. Neither the client nor ESG+F shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless required by law, the information is already generally known to the public or the other party consents to the disclosure. All documentation and materials containing confidential information provided by one party to the other shall be returned upon request.
11. For the Services, ESG+F maintains professional indemnity insurance. Should the Client require a certificate of currency, ESG+F will provide a copy upon request at any time prior to completion of the Services.
12. Any dispute or difference ("Dispute") between the Client and ESG+F may be notified by a party to the other party and the parties shall:
 - a. firstly, meet to negotiate, in good faith, resolution of the Dispute;
 - b. secondly, if negotiation fails to achieve a resolution of the Dispute within 10 working days of the notification of the Dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, provided that this provision shall not prevent ESG+F from instituting legal action at any time to recover moneys owing by the Client to ESG+F; and
 - c. each party must pay its own costs of the mediation and the parties must pay the mediators remuneration in equal shares.
13. Either party may terminate this Agreement by written notice to the other if:
 - a. the other party breaches or fails to carry out any of its material obligations or duties under this Agreement and the breach or failure is not capable of remedy;
 - b. the other party breaches or fails to carry out any of its material obligations or duties under this Agreement which breach is capable of remedy, but fails to remedy that breach within 10 Business Days after receipt of written notice giving full particulars of the breach and requiring it to be remedied; or
 - c. an insolvency event occurs in relation to either party.
14. ESG+F may, without prejudice to any other rights or remedies it may have, by notice in writing served on the Client suspend its obligations under this Agreement:
 - a. immediately by written notice if the Client has failed to pay in accordance with this Agreement; or
 - b. if the Client is in breach of any of the other terms of this Agreement and the breach has not been remedied within 10 Business Days (or longer as ESG+F may allow) of a written notice served by ESG+F on the Client specifying the breach and requiring the breach to be remedied.
15. ESG+F may, with the Clients prior approval which shall not be unreasonably withheld or delayed, subcontract all or any of the Services to be performed hereunder to a sub-contractor or independent contractor. Any clause of this Agreement which excludes or limits the liability of ESG+F in respect of the provision of Services extends to protect ESG+F's employees, agents and sub-contractors and any other person performing the Services. For the purposes of, and to give effect to, this clause:
 - a. ESG+F will hold the benefit of these conditions for its employees and agents and any sub-contractor and its employees; and
 - b. all such employees, agents and sub-contractor shall be deemed to be parties to this Agreement.
16. Neither party may assign, transfer or sublet any obligations under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under this Agreement.
17. In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that it put forward the Agreement or any part of it.
18. The laws of Western Australia govern this Agreement. The parties submit to the exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia.
19. Definitions: "Agreement" means the Letter of Engagement and the Terms and Conditions.