



## General Sales Terms and Conditions

2 December 2020

**Revision History**

Version	Date	Author(s)	Reason for Change
1	1/12/2020	Nik Zwaneveld	Initial Draft

## Terms

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### 1. Definitions & interpretation

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**Background IP** means Intellectual Property Rights owned or licensed by a party prior to the date of commencement of this Agreement, or subsequent to that date but unrelated to this Agreement;

**Client Materials** includes, without limitation, any equipment, materials, data or information supplied to Membrane Works or its contractors by or on behalf of the Client;

**Confidential Information** means all information of a party or its clients or other suppliers, which would reasonably be regarded as confidential, disclosed to the other party before or after the date of this Agreement, including without limitation information relating to:

- (a) Background IP; and
- (b) the business, operations products, customers and suppliers of the disclosing party, whether disclosed verbally, in writing, in electronic form or by any other means, but excluding information which:
  - (c) the recipient can prove by its own written records that it knew or possessed before the Confidential Information was disclosed or made available to it by the disclosing party;
  - (d) is or becomes available to the public otherwise than by a breach by the recipient of this Agreement;
  - (e) is lawfully acquired by the recipient from a third party without restrictions as to its use or disclosure; or
  - (f) is disclosed as required by law;

**Deliverables** means the deliverables to be supplied to the Client under this Agreement as specified in the Details;

**Proposal** means the matters set out in the table on the front page(s) of this Agreement;

**GST** means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related tax imposition Acts of the Commonwealth of Australia;

**Intellectual Property Rights** means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity, including copyright, discoveries, inventions, innovations, technical information and data, prototypes, processes, specifications, know-how, plant varieties, the right to have confidential information kept confidential and all rights and interests of a like nature, together with any and all documentation and other material relating to such rights and interests;

**Services** means the services, including any Deliverables Membrane Works is providing under this Agreement as described in the Proposal; and

**Special Conditions** means any conditions noted in Annexure B.

#### 1.2 Interpretation

- (a) The Proposal, these terms, the Special Conditions and any annexures together constitute the Agreement.
- (b) If any Special Conditions have been identified, those Special Conditions override the provisions of these terms to the extent of any inconsistency.

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### 2. Term

- (a) This Agreement commences on the Commencement Date specified in the Details and continues in force until completion of the Services or until the Agreement is terminated in accordance with its terms.

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### 3. Services

- (a) Membrane Works agrees to provide the Services to a standard being that which is reasonably to be expected of a qualified professional person providing the Services and otherwise in accordance with the Agreement.
- (b) Membrane Works will use best efforts to complete the Services by the Completion Date and any milestone dates (if any) specified in the Proposal.
- (c) The Client acknowledges that where the Services involve research, development, expert opinion or testing, Membrane Works may produce no results or conclusions, or opinions or results that are unpredictable or which do not favour the Client. Membrane Works makes no promise, prediction or warranty concerning these conclusions, opinions or results.

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### 4. Client's obligations

#### 4.1 Client to perform Client's duties

The Client will comply with or perform the Client Duties (if any) specified in the Proposal and, at Membrane Works' request, will promptly provide:

- (a) the Client Materials required to be incorporated into, or used to perform, the Services;
- (b) instructions and responses to Membrane Works' reasonable requests on all matters relating to the Services; and
- (c) any other information, ideas or suggestions which Membrane Works is to consider in performing the Services.

#### 4.2 Use of Client Materials

In respect of the Client Materials, the Client will ensure, that, to the extent applicable:

- (a) the Client Materials are accurate, complete and current;
- (b) the Client is entitled to supply the Client Materials to Membrane Works and its contractors for the purposes of the Services;
- (c) the use of the Client Materials in connection with the Services is lawful and does not require the consent, permit or authorisation of any party, including any consent from third parties to use their intellectual property in the performance of the Services;
- (d) if the Services include the use, reproduction or adaptation of Client Materials, the Client will obtain all necessary authority for that use, reproduction and adaptation;
- (e) unless specified by written notice to Membrane Works, the Client Materials are not reasonably capable of constituting a threat to safety, health, life, property or the environment; and
- (f) the Client will give written notice to Membrane Works of any matters affecting the safe, secure and appropriate transportation, use, storage and disposal of the Client Materials.

#### 4.3 No liability if Client duties not fulfilled

Membrane Works will not be responsible for any deficiency or alleged deficiency (including delay) in the performance of the Services attributable to:

- (a) a breach by the Client of a material term this Agreement; or
- (b) a failure by the Client to provide relevant, accurate or timely information or decisions.

#### 4.4 Occupational health and safety

The Client will ensure that any Membrane Works personnel attending a site inspection or any premises of, or known to, the Client in connection with the provision of the Services is provided a safe place of work in compliance with relevant occupational health and safety legislation or requirements.

### 5. Payment

#### 5.1 Fees

The Client will pay Membrane Works the fees at the rate or amount and in the manner specified in the Proposal.

#### 5.2 Expenses

- (a) The Client must pay all reasonable travel, accommodation, courier and administrative expenses which Membrane Works incurs in performing the Services including those specified in the Details.
- (b) Where practicable, Membrane Works will not incur any additional expenses without first notifying the Client and obtaining approval for the relevant expenditure.

#### 5.3 Invoices

- (a) Membrane Works will submit a tax invoice to the Client monthly or otherwise in accordance with the Proposal.
- (b) The Client must pay those tax invoices within 14 days of the date of issue of each tax invoice.

#### 5.4 Overdue payments

Membrane Works may suspend performance of the Services or its other obligations under this Agreement until all overdue amounts are paid.

### 6. Taxes

- (a) Unless otherwise stated in the Details, all charges and expenses payable by the Client under this Agreement are exclusive of GST but inclusive of any other applicable taxes, duties, imposts and other similar charges payable in respect of the Services.
- (b) If GST is payable on any supply made by Membrane Works under this Agreement, the Client will pay to Membrane Works, an additional amount equivalent to the GST at the time payment to Membrane Works is due.

### 7. Intellectual Property Rights

- (a) Each party retains its rights in any Background IP and those rights will not be transferred or changed by the use of Background IP in connection with the Services or its disclosure by one party to this Agreement to the other.
- (b) Intellectual Property Rights created in the course of performing the Services will be owned by Membrane Works.
- (c) On full payment by the Client of all fees and expenses due under clause 5 Membrane Works grants to the Client a non-exclusive, non-transferable, royalty free, perpetual licence to use the Intellectual Property Rights in the Deliverables for the Client's internal business purposes.

### 8. Confidential Information, privacy and publications

#### 8.1 Obligation of confidentiality

Both parties must (except as may be required by law or with the other party's prior written consent):

- (a) maintain the secrecy and confidentiality of any Confidential Information of the other party; and

- (b) refrain from copying, transmitting, retaining or removing any Confidential Information of the other party, or attempting to do so, except to the extent necessary to perform the Services.

#### 8.2 Privacy

Each party must comply with the *Privacy Act 1988* (Cth) and the reasonable directions of the other party in relation to the handling of any personal information that that party holds or has held and used in connection with this Agreement.

### 9. Liability & warranties

#### 9.1 Non-excludable liability

- (a) Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.
- (b) Subject to (a), any representation, warranty, condition or undertaking which, but for this clause, would be implied in this Agreement by law is excluded.

#### 9.2 Exclusion of certain losses

Neither party will be liable for any loss of profits, loss of data, loss of business opportunity and liabilities in respect of third parties, or special, incidental, indirect or consequential loss or damages, which may be suffered or incurred or which may arise directly or indirectly in connection with any material or services supplied under this Agreement or in connection with any act or omission (negligent or otherwise) on the part of a party, or otherwise out of the relationship created by this Agreement.

#### 9.3 Remedies for terms implied by law

To the extent permitted by law, the liability of Membrane Works for any claim arising directly or indirectly from a breach of any non-excludable term or condition implied by statute is limited, at the option of Membrane Works, to one or more of the following: the supplying of the Services again; or the payment of the cost of having the Services supplied again.

#### 9.4 Liability cap

Subject to clauses 9.1-9.3 inclusive:

- (a) the total liability of Membrane Works to the Client for loss or damage of any kind whether arising in tort (including negligence), contract, statute, law, equity or under an indemnity is limited to the fees paid by the Client under this Agreement;
- (b) each party's liability under this Agreement is reduced to the extent that any damage, liability, loss or cost arises from or is attributable to any act or omission of the other party, their employees, agents, contractors or students.

#### 9.5 Representations and effect of clause

- (a) The Client acknowledges that it has not relied on any representations made by Membrane Works which are not set out in this Agreement.
- (b) References to Membrane Works in this clause 9 include Membrane Works directors, employees, agents, and contractors.
- (c) This clause 9 applies regardless of anything else in this Agreement, to the extent permitted by law.

### 10. Termination

- (a) Either party may terminate this Agreement immediately by written notice if the other commits a material breach of this Agreement which it fails to correct within 30 days of being notified of the breach, or if the other party becomes the subject of any insolvency administration.

- (b) The Client may terminate the Agreement or reduce the scope of Services by no less than 7 days written notice to Membrane Works but the Client must pay all fees and expenses incurred by Membrane Works in connection with the Services up to the date of receipt by Membrane Works of notice from the Client and all future unavoidable costs and expenses Membrane Works incurs in relation to the Agreement.
  - (c) Clauses 3(c), 4.3, and 7–9 inclusive survive the expiration or earlier termination of this Agreement.
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## **11. General**

- (a) This Agreement contains the entire understanding between the parties concerning its subject matter and supersedes all prior oral and written representations and agreements.
- (b) This Agreement is governed by and must be construed in accordance with the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.
- (c) This Agreement may only be varied in writing by the parties.
- (d) The relationship established by this Agreement between Membrane Works and the Client is one of principal and independent contractor and not one of employment, partnership or joint venture.