



Element Engineering Australia

**AGREEMENT FOR SUPPLY OF SERVICES
TIME AND MATERIALS BILLED ENGINEERING CONSULTING WORK
ELEMENT ENGINEERING AUSTRALIA PTY LTD**

1 Background

Date _____ / _____ / _____

Parties _____ of _____ (Client).

Element Engineering Australia Pty Ltd (ACN 143 786 216) of 5 Carson Road, Malaga, Western Australia (**Services Provider**).

Commencement Date _____ / _____ / _____

Completion Date _____ / _____ / _____

2 Details

Services The Services Provider must deliver to the Client the specified Project Materials as set out in the Specification.

Fees In consideration of the provision of the Services in accordance with the Agreement, the Client will pay the Services Provider the Fees as set out in the Specification.

Client Resources

3 Definitions and interpretation

3.1 Definitions

Agreement means these terms and conditions for the supply of Services along with the Work Order.

Background IP means Intellectual Property rights owned by or licensed to a party as at the Commencement Date, or acquired or developed by a party during the term of this Agreement independently of the activities carried out under this Agreement, which that party has the right to license to third parties and which are necessary or desirable for the performance of the Services.

Client Resources means all equipment, materials, data and information (including any Background IP) to be supplied by the Client to Services Provider under clause 4(g), and as specified in clause 2.

Fees means those monies to be paid to the Services Provider by the Client under the Agreement as specified in the Work Order.

Intellectual Property means statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, plant varieties, registered and unregistered trade marks, registered and unregistered designs, circuit layouts and rights to require information to be kept confidential, and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, and all rights to apply for any of the above, but does not include Moral Rights that are not transferable.

Moral Rights means any moral rights or other analogous rights arising under any statute (including the Copyright Act 1968 (Cth) or any law of the Commonwealth of Australia), that exist or may come to exist anywhere in the world.

Project IP means all Intellectual Property created, conceived, developed or reduced to practice in the course of the performance of the Services including without all Intellectual Property in the Project Materials.

Project Materials means all materials to be supplied to the Client by the Services Provider as part of the Services, under the Agreement, as specified in the Work Order.

Services means the specified Project Materials as set out in the Work Order.

Specification means the details of the Services as set out in the specification in schedule 1.

Termination Date means the earlier of:

- (a) the date of termination of this agreement by the Client or the Services Provider; and
- (b) the date of expiry of this agreement.

Work Order means the document entitled "Work Order" that is provided by the Services Provider to the Client and to which these terms and conditions for the supply of Services relate.

3.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and conversely, and a gender includes all genders; and
- (c) "including" and similar expressions are not words of limitation.

4 Services

- (a) The Services Provider must perform the Services in accordance with this Agreement.
- (b) The Services Provider must perform the Services with a reasonable standard of care and diligence, and in accordance with all applicable laws, regulations, codes of practice, national standards and applicable ethics and other regulatory approvals.
- (c) The Services will be performed by the employees or agents that the Services Provider may choose as most appropriate to carry out the Services.

- (d) The Services Provider may subcontract part or all of the Services.
- (e) The Services Provider will use reasonable endeavours to complete the Services by the Completion Date.
- (f) Risk in the Project Materials passes to the Client upon physical delivery to the Client. Property in the Project Materials passes to the Client upon payment of the Fees for those Project Materials.
- (g) The Client must provide to Services Provider the Client Resources (if any) specified in clause 2 as soon as reasonably practicable after the Commencement Date or as otherwise specified in clause 2.
- (h) The parties agree that the Services to be provided are only those specified in the Work Order. If additional Services are required to be provided (including due to the provision of incorrect information by the Client) then this Agreement may be terminated in accordance with clause 11(c) by the Services Provider, and a new Agreement may be provided to the Client for the provision of the additional Services.

5 Payments

5.1 Payment of Fees

- (a) The Client must pay the Fees as specified in clause 2.
- (b) The Services Provider may request that a percentage of the Fees be paid to it by a certain date in advance, by way of deposit, before commencing provision of the Services, and the Client must pay the deposit amount by the requested date.
- (c) The Client acknowledges that the Fees are exclusive of any GST that may be charged by the Services Provider to the Client, and therefore, the Services Provider will be entitled to add on GST.
- (d) Where the Services Provider charges are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.

5.2 Invoicing

- (a) The Services Provider will submit a tax invoice for the Fees and any approved expenses monthly in arrears or as otherwise specified in clause 2 and the Client must pay each invoice within 14 days after receipt, unless the Client finds reason to dispute such invoice, in which case payment shall be made only for the undisputed portion of such invoice and the disputed portion shall be settled between parties within the shortest possible time.
- (b) If the Client does not make a payment of the Fees by the date stated in an invoice or as otherwise provided for in the Agreement, the Services Provider is entitled to do any or all of the following:
 - (i) charge interest on the outstanding amount at the rate of 6% per year above the cash rate of the Reserve Bank of Australia, accruing daily;
 - (ii) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
 - (iii) not perform any further Services (or any part of the Services).

5.3 Variation of Fees

The Services Provider is entitled to vary the hourly rates during the term of this Agreement with written notice to the Client of 14 days prior to the change being implemented.

6 Client's obligations

- (a) During the preparation of the Work Order and performance of the Services the Client will:
 - (i) co-operate with the Services Provider as the Services Provider reasonably requires;
 - (ii) provide the information and documentation that the Services Provider reasonably requires; and
 - (iii) ensure that the Client's staff and agents cooperate with and assist the Services Provider.

7 Acceptance

- (a) Within 14 days of having received materials delivered under clause 4(f) the Client may notify the Services Provider of any defective Services or Project Materials or deviations from the requirements of this Agreement identified in relation to the Services or Project Materials, and the Services Provider must at its own expense remedy such defects or deviation.

8 Intellectual property rights

- (a) Each party acknowledges that all Background IP remains the sole property of its owner. Each party acknowledges that it acquires no right, title or interest in or to the Background IP of the other party by virtue of this Agreement or the disclosure or use of the Background IP in the course of the performance of the Services, other than as expressly set out in this Agreement.
- (b) Each party grants to the other party a non-exclusive, royalty-free, non-transferable licence during the term of this Agreement to use the Background IP owned by it to the extent necessary and for the sole purpose of the performance of the Services.
- (c) Any Inventions, if they contain Intellectual Property rights capable of protection, except for those specified in clause 8(d) below, are to become the sole and exclusive property of the Client.
- (d) The Client does not however, own the Intellectual Property rights to the engineering simulations produced, and procedure used, as part of the Services Provider's engineering investigation. This Intellectual Property, whether or not it is capable of protection, is to become the sole and exclusive property of the Services Provider.
- (e) The parties agree to indemnify each other fully against all liabilities, costs and expenses which one party may incur as a result of any breach of this clause, by the other party or the other party's personnel.
- (f) The obligations accepted by the parties under this clause, survive termination or expiry of this Agreement.

9 Confidentiality and marketing

- (a) The Client and the Services Provider acknowledge that information provided by the Client pursuant to this Agreement, which is generally available in the public domain, will not be regarded as confidential.
- (b) The Client grants the Services Provider a non-exclusive, royalty-free, transferable, licence to enable the Services Provider to use the Client's information, which is generally available in the public domain, for the purpose of promoting or marketing its services.

10 Warranties, indemnity and insurance

- (a) The Services Provider warrants that:
 - (i) it will use reasonable care and skill in performing the Services in accordance with all applicable laws, regulations, codes of practice, national standards and applicable ethics and other regulatory approvals; and
 - (ii) all Project Materials will be of merchantable quality and fit for any purpose specified by the Client.
- (b) The Services Provider provides no warranty that any result or objective can or will be achieved or attained by the Completion Date.
- (c) Except in the case of death or personal injury caused by the Services Provider's negligence, the liability of the Services Provider under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Client to the Services Provider under this Agreement.
- (d) Neither party is liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.
- (e) The Client must indemnify and hold the Services Provider harmless from and against all Claims and Losses arising from loss, damage, liability, injury to the Services Provider, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Client by the Services Provider, its employees or suppliers, or supplied to the Services Provider by the Client within or without the scope of this Agreement.
- (f) The Services Provider must during the term of this Agreement at its cost take out and maintain all necessary or prudent insurances in relation to this Agreement.

11 Term and termination

- (a) This Agreement commences on the Commencement Date and continues in force:
 - (i) until the Completion Date; or
 - (ii) where the Services Provider has not performed a Service or delivered a Project Material by the Completion Date, until all Services have been performed and all Project Materials have been delivered.

- (b) Either party may terminate this Agreement immediately by giving written notice to the other party if at any time:
 - (i) the other party commits a breach of any provision of this Agreement and, where the breach is capable of remedy, fails to remedy the breach within 7 days of receiving written notice to do so; or
 - (ii) the other party becomes insolvent, enters into liquidation or receivership, becomes subject to any form of external administration, makes a composition or arrangement with its creditors generally, or takes advantage of any statute for the relief of insolvent debtors.
- (c) The Services Provider may terminate this Agreement immediately if:
 - (i) the Client seeks to change, or request the provision of additional, Services not already specified in the Work Order; or
 - (ii) the Services Provider determines that the Project Materials:
 - (A) cannot achieve engineering targets and/or objectives as specified by the Client; or
 - (B) will not comply with all applicable laws, regulations, codes of practice, national standards and applicable ethics and/or other regulatory approvals.
 - (iii) the Client determines that the Project Materials are too expensive to manufacture.
- (d) Upon termination or expiry of this Agreement for any reason: the Fees, expenses or reimbursements payable by the Client to the Services Provider, in respect of any period prior to the Termination Date, must be paid by the Client within 14 days after the Termination Date.
- (e) Clauses 8 and 8(a) survive the termination or expiry of this Agreement for any reason.

12 General

12.1 Force majeure

- (a) Neither party has any liability under or may be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that party.
- (b) The party affected by these circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than three months, either party may terminate this Agreement by written notice to the other party.

12.2 Entire agreement

The Agreement contains the entire agreement between the parties as to its subject matter and may only be amended in writing signed by all parties.

12.3 Amendment

This Agreement may only be amended in writing signed by duly authorised representatives of the parties.

12.4 Notices

Notices must be given to the parties' addresses set out in clause 1 of this Agreement or as otherwise notified by the parties in writing and must be delivered in person or sent by email or prepaid post (airmail if international). Notices will be deemed to have been received:

- (a) if delivered in person — on the date of delivery;
- (b) if sent by email — on the date of delivery if a business day, otherwise, on the next business day; or
- (c) if sent by prepaid post — 3 business days after posting (7 business days if sent to or from a place outside of Australia).

12.5 No assignment

A party must not assign any of its rights or obligations under this Agreement without the other party's prior written consent.

12.6 No waiver

No delay or indulgence by a party in enforcing this Agreement will prejudice or restrict the rights of that party, nor will a waiver of those rights operate as a waiver of a subsequent breach.

12.7 No disadvantage to party preparing section

No part of this Agreement is to be construed to the disadvantage of a party because that party was responsible for its preparation.

12.8 No relationship

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment, principal and agent or trustee and beneficiary.

12.9 Parties must do all things and sign all documents

A party, at the request of another party, must do all things and sign all documents necessary to give effect to this Agreement.

12.10 Severability

If any provision of this Agreement is or becomes invalid or unenforceable then, if the provision can be read down to make it valid and enforceable without materially changing its effect, it must be read down, and otherwise the offending provision must be severed and the remaining provisions will operate as if the provision had not been included.

12.11 Jurisdiction

This agreement is governed by the laws of Western Australia, and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

12.12 Authority of parties

Each signatory to this Agreement warrants that he or she has authority to bind the party that he or she is stated to represent.

12.13 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together will constitute one agreement.

The Services Provider agrees to perform the Services and the Client agrees to make payment of the Fees, on the terms of this Agreement.

Executed as an agreement.

EXECUTED by **Element Engineering
Australia Pty Ltd (ACN 143 786 216)**)
in accordance with section 127 of the)
Corporations Act 2001 (Cth))

Signature of Director/Company Secretary

Signature of Director

Name of Director/Company Secretary

Name of Director

Signed for and on behalf of)
_____)

Signature of Witness

Signature of authorised representative

Name of Witness

Name of authorised representative

Date

SCHEDULE 1 Specifications

Details of Specification

1. Services:

2. Fees:
