

// TERMS OF ENGAGEMENT

// Consulting Engineering Services

These terms of engagement together with the Fee Submission Form (Fee Proposal) constitute the entire agreement between the Client and Advanced System Engineering and Design Pty Ltd ACN 624 550 321, ABN 23 624 550 321, Trading as ASED Specialist Refrigeration Consulting Engineers (ASED, us, our or we). If there is any inconsistency between the Fee Submission Form and this Agreement, the Fee Submission Form overrides the provisions of the Agreement to the extent of the inconsistency.

PART A – PERFORMANCE OF THE SERVICES

A1 ASED shall perform the Services with due care, skill and diligence and in accordance with the standard performance considered acceptable by the consulting engineering profession in Australia.

A2 ASED shall communicate with the Client by and through ASED Representative, who shall have authority to bind ASED in respect of all matters arising out of or in connection with the Agreement.

A3 Unless otherwise agreed in writing, ASED may rely on and treat the Documentation and the directions provided by the Client as accurate and correct. ASED shall notify the Client if and to the extent ASED becomes aware that any information provided by the Client contains an ambiguity, error, omission, discrepancy, insufficiency, or inconsistency or is otherwise inefficient to enable ASED to perform the Services.

A4 If ASED becomes aware of any matter that will change the scope, character, quality, sequence, or timing of the Services, then ASED shall promptly notify the Client of that matter.

A5 ASED will provide what it considers to be industry standard designs (based on economy of construction and its experience with similar projects), unless instructed otherwise. Such instructions may involve a variation of our scope of work and additional fees. Calculations will be produced to satisfy our internal QA systems but will not be issued to third parties for review unless agreed otherwise.

A6 Changes that require redesign and/or change in the scope of the Services may attract additional charges and we will advise you of these costs. Where the Client requests additional services from ASED that are not included in the original scope of services forming this Agreement, ASED is not obliged to proceed with such additional work until a revised agreement or fee variation is in place. This includes (but is not limited to) abortive work which arises due to fast-tracking the project prior to approvals or other design inputs being inadequately defined (e.g. commencing design development prior to development approval, commencement of detailed design prior to tenancy briefing, document issue prior to full co-ordination of all disciplines etc.). Should you require us to stop work for any reason we will invoice you for the work (or part thereof) completed to the date we cease work.

A7 Unless noted otherwise within this Agreement, an allowance for visits to site to inspect work compliance with our design have been included in the Fee, however this should be considered an estimate only. Whilst we will make reasonable efforts to complete our works within this allowance, we will be entitled to an adjustment where events or matters factors beyond our control (e.g. redesign due to latent site

conditions or construction errors, poor contractor communications or performance) affect the performance of the Services.

A8 At the request of the Client, ASED may express an opinion of probable cost of the Project. The probable cost is based on ASEDs' experience as a consulting engineer and not as a quantity surveyor. The Client accepts and acknowledges the estimate is merely a guide and ASED accepts no liability for these estimates.

PART B – CLIENT RESPONSIBILITY

B1 The Client shall promptly provide ASED with all relevant Documentation and instructions necessary and other information to enable ASED to provide the Services.

B2 The Client shall communicate with ASED by and through the Clients' Representative, who shall have authority to bind the Client in respect of all matters arising out of or in connection with the Agreement.

B3 If the Client becomes aware of any matter that will change the scope, character, quality, sequence, or timing of the Services, then the Client shall promptly notify ASED of that matter.

B4 The Client shall ensure that adequate public liability and contract works insurances are obtained and maintained for the course of the Project.

B5 In a multi-disciplinary environment, overall co-ordination of the Project will be undertaken by the Client Representative, unless specified otherwise in writing.

B6 A contract superintendent engaged by the Principal will be responsible for administering the contract. (If ASED are not engaged for this service.)

B7 All consultants' drawings in respect of the Project will be made available to us in Native File Formats, including but not limited to Revit (RVT) and AutoCAD (DWG) compatible electronic format.

B9 The project as described will not change significantly in extent, scope or budget.

PART C – PAYMENT TO ASED FOR THE SERVICES

C1 Unless agreed otherwise in writing, ASED shall issue progress claims at monthly intervals and the Client shall pay each claim in full within 30 days of the date of the claim by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and ASED.

C2 The Client shall pay all costs and expenses (including, without limitation, legal costs on an indemnity basis) incurred by ASED in pursuing any overdue payments.

C3 The Client shall pay ASED the Fee and, unless stated otherwise, the Reimbursable Expenses, which will be charged at cost plus 10%, and may be invoiced by ASED as incurred.

C4 ASED reserve the right to charge interest on overdue accounts on the daily overdue balance at the rate of 12.5% per annum.

C5 ASED reserve the right to charge for additional drawings in excess of 10 sets.

PART D – HOURLY RATES

D1 The Client agrees to pay ASED the Fee described in the Fee Submission Form.

D2 The Fee in the Fee Submission Form is valid for the duration of the works provided works are commenced within 6 months of acceptance and completed within 12 months of acceptance. ASED reserve the right to review their position in relation to Fees should works not commence within this period. Any variation to the Fee will be notified in writing to the Client.

D3 If the Fee or a means of calculating the Fee is not specified in the Fee Submission Form or if a variation is required, then the Fee shall be calculated using the schedule of rates.

D4 If the Client varies the scope, character, quality, sequence, or timing of the Services, then ASED may vary the Fee accordingly.

D4 All amounts expressed or determined to be payable under this Agreement are calculated and will be determined exclusive of GST unless otherwise expressly stated that GST is included.

PART E – SCOPE OF LIABILITY

E1 To the maximum extent permitted by law, the maximum liability of ASED arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be the lesser of \$100,000 or ten times the value of the Fee.

E2 ASED shall not be liable to the Client for:

(i) the acts, omissions or defaults of inadequate brief from the Client or other contractors and/or consultants engaged by the Client (including consultants or contractors engaged by ASED as agent for the Client);

(ii) any changes, alterations or additions to the Services made by others without the express approval of ASED;

(iii) any Services that are not performed in accordance with the Agreement, unless ASED is notified in writing of the non-performance within 1 year of the provision of those Services;

(iv) any loss of use, opportunity or production, loss of interest, earnings or profit, holding or financial costs, business interruption or any indirect or consequential losses;

(v) any loss, damage or claim to the extent that such loss, damage or claim was caused or contributed to by the Client or its employees, agents, consultants or contractors;

(vi) any financial cost to the Client for extra construction costs related to latent site conditions, unforeseen elements or general design improvements or alternative design solutions;

(vii) ASED accepts no liability for any new or pre-existing defects or Building Code and Australian Standards violations related to the current use of the Client's asset;

(viii) ASED accepts no liability for temporary works required to allow occupation of the Client's asset during and post construction and the Client retains full responsibility for this condition; and

E3 ASED including its employees, agents or sub-consultants are to be discharged from all liability in respect to the Services after the expiration of one (1) year from the date of final invoice. The client shall not be entitled to commence any action or claim whatsoever against ASED (or any employee, agent or sub-consultant of ASED).

E4 If, and to the extent that, any of clauses E1, E2 or E3 is void as a result of the Australian Consumer Law, then ASEDs' 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.

PART F – TERMINATION OF SERVICES / DISPUTES

F1 This Agreement may be terminated at any time by mutual agreement in writing by the parties.

F2 If either party commits a substantial breach of this Agreement, the other party may give to the party who committed the breach a written notice to show cause. A notice to show cause must state that it is a notice given under this clause, specify the alleged breach with reasonable details, require the party who committed the breach to show cause in writing why the party giving notice should not terminate this Agreement and must specify a date (which must be not less than 10 Business Days after the notice is served) by which the party who committed the breach must show cause.

F3 Substantial breaches include suspension of work other than as permitted under this Agreement, failure to proceed with due care, skill and diligence and failure of the Client to pay ASED the Fee or any other amounts under this Agreement.

F4 If the recipient of a notice to show cause fails to show reasonable cause why the other party should not terminate this Agreement within the time specified in the notice, the other party may, by further written notice terminate this Agreement.

F5 Either party may terminate this Agreement without notice if the other party is subject to an Insolvency Event. This right is in addition to any other rights under this Agreement.

F6 If this Agreement is terminated for any reason other than a breach of the Agreement by ASED, the Client must pay to ASED the applicable portion of the Fee for the Services performed prior to the date of termination together with all Reimbursable Expenses incurred by ASED prior to the date of termination which would have been payable had the Agreement not been terminated.

F7 If within 28 days of the service of a notice of dispute, the parties cannot resolve the dispute the subject of that notice, then either party may refer the dispute to the Australian Disputes Centre for determination by expert determination in accordance with the Guidelines for Expert Determination of the Australian Disputes Centre.

F8 The costs of any independent person engaged to carry out the expert determination will, subject to any determination by the expert to the contrary, be borne by the parties equally. Each party must pay its own legal expenses in respect of the determination.

PART G – INTELLECTUAL PROPERTY RIGHTS

G1 All intellectual property created by ASED before the date of this Agreement remains vested in ASED.

G2 All Intellectual Property Rights in all drawings, reports, specifications, bills of quantities, calculations and other documents or materials created by or for ASED in connection with the Services shall remain vested in ASED (ASED Materials).

G3 ASED grants to the Client a non-exclusive, non-transferrable, royalty free licence to use, adapt, reproduce, and publish any of the ASED Materials for the purposes of completing the Project only.

G4 The Client grants ASED an irrevocable, royalty free licence to use and manipulate all Intellectual Property Rights in any information, documents and other particulars which the Client provides to ASED to the extent reasonably necessary for ASED to perform the Services.

PART H – SPECIALIST ASSISTANCE

H1 If ASED considers it appropriate to do so, they may with or without the Client's prior approval, which shall not be unreasonably withheld, engage another consultant to assist in specialist areas, which are deemed outside of ASEDs core specialities.

H2 Unless otherwise specified these costs will be treated as outgoings and they will be charged at cost plus 20%.

H3 The Client agrees to indemnify and keep indemnified ASED in respect of any fees, costs, expense, and any claim (including all reasonable legal costs and expenses) whatsoever in relation to work performed by the consultant.

H4 By appointing a consultant, ASED does not assume a duty of care and give no warranty, guarantee or representation about the professional capacity, reliability of the consultant.

PART I – COMMENCEMENT OF AGREEMENT

This Agreement shall be deemed effective on and from the date of commencement of services by ASED or the date on which both parties have signed this Agreement, whichever is earlier.

PART J – NOTICES

J1 A notice required or permitted to be given by one party to the other under this Agreement must be in writing, signed by the party giving it or their duly appointed solicitor, and is deemed as being duly given if:

- (a) personally delivered to that party;
- (b) sent by pre-paid post, addressed to the other party; or
- (c) transmitted by email, to the other party's email address.

J2 A notice given to a party in accordance with this clause 16 is deemed to have been duly given and received:

- (a) at the time of delivery;
- (b) on the second Business Day after the day on which it is posted; and

(c) on the day of transmission, where the person giving the notice has received no indication in any form that the notice has not been received, however if such delivery is later than 4.00pm or not on a Business Day, at 9.00am on the next Business Day.

J3 The address of a party is the address or number set out in this Agreement or another address which that party may from time to time give notice of to the other party.

PART K – CONFIDENTIALTY

K1 Each party agrees that it will not use Confidential Information in any way that might prejudice its confidentiality.

K2 The Confidential Information does not include information which:

- (a) is generally available in the public domain otherwise than as a result of a breach of this Agreement; or
- (b) was known by the recipient party prior to the disclosing of the information to it.

K3 Despite this clause, either party may make such disclosures in relation this Agreement as is reasonably necessary:

- (a) to its professional advisers upon those persons undertaking to keep confidential any information disclosed; or
- (b) to comply with any applicable law or the requirement of any regulatory body.

PART L – FORCE MAJEURE

L1 ASED is not liable or in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of ASED.

L2 If such circumstances continue for a continuous period of more than 60 days, either party may terminate this Agreement by written notice to the other party.

PART M – MISCELLANEOUS

M1 This Agreement is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

M2 This Agreement may not be varied or amended except in writing signed by the parties.

M3 If any provision of this Agreement is or becomes legally ineffective, under common law or legislation, the ineffective provision may be severed from this Agreement which otherwise continues to be valid and operational. The parties will agree on an arrangement having a legal and economic effect which will be as similar as possible to the ineffective provision.

M4 This Agreement does not create a relationship of employment, agency or partnership between the parties.

PART N – DEFINITIONS

Agreement means this agreement for the provision of consulting engineering services and includes these Terms and Conditions and the Fee Submission Form.

Business Day means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

Client means the client described in the Fee Submission Form.

Client Representative means the person appointed by the Client from time to time to act as the Client's representative to exercise the Client's functions under this Agreement.

Documentation means all information supplied to ASSED by electronic or other means for the purposes of this Agreement.

Fee means the fee payable for the Services pursuant to the Fee Submission Form and does not include any additional fee for additional services.

Fee Submission Form means the form attached to this Agreement which outlines, among other things, the Services and the Fee.

Insolvency Event means any one or more of the following circumstances:

(a) either ASSED or the Client informs the other party in writing or creditors generally that it is or may become insolvent, unable to pay its debts when due and payable or financially unable to proceed with this Agreement;

(b) execution is levied against ASSED or the Client by a creditor which is not satisfied, set aside or withdrawn within 14 days after execution is so levied;

(c) ASED or the Client suspends payment of its debts;

(d) the Client, being an individual person or a partnership including an individual person: commits an act of bankruptcy; has a bankruptcy petition presented against him or her or presents his or her own petition; is made bankrupt; makes a proposal for a scheme of arrangement or a composition; has a deed of assignment or deed of arrangement made, or accepts a composition; is required to present a debtor's petition; or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth);

(e) ASED or the Client, being a corporation: enters into a deed of company arrangement, scheme of arrangement or composition with creditors; has (voluntarily or otherwise) a receiver, receiver and manager, controller or administrator, liquidator or provisional liquidator appointed to it; has a winding up order made against it or an application for a winding up order against it made to the court and not stayed within 14 days; resolves by special resolution that it be wound up voluntarily or placed under official management; or has any of its property taken possession of by a mortgagee.

Intellectual Property Rights includes property and rights in respect of or in connection with trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Project means the project carried out by the Client for which the Services form part of.

ASED Representative means the person appointed by ASED from time to time to act as ASEDs' representative to exercise ASEDs' functions under this Agreement.

Reimbursable Expenses means all payments made to third parties which are necessary to enable ASED to carry out the Services.

Services means the works to be carried out by ASED for the Client in connection with the Project pursuant to the Fee Submission Form.