

TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

Tenrod Australia Pty Ltd

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In these terms and conditions, **we** are Tenrod Australia Pty Ltd or any of its associated companies and **you** are the Customer.

These terms and conditions apply to all supplies of Services by us to you, unless otherwise agreed in writing signed by you and us.

1 Definitions

Completion Date means the date on which the Services are delivered in accordance with clause 6.2.

Confidential Information means any information, but is not limited to, trade secrets and marketing information, proprietary software, computer documents, processes or applications and all other documents that are marked, or which the recipient is told is, confidential.

In the context of these terms and conditions, confidential information does not include information that:

- (a) is in the public domain (other than as a result of an unauthorised disclosure);
- (b) which the recipient already possesses at the time of disclosure (unless received as a result of an unauthorised disclosure); or
- (c) is required to be disclosed by law.

Deliverable means the tangible output of the Services (including, but not limited to, engineering and working instructions, specifications, drawings, designs, writings, layouts, prototypes and Software).

Deposit means the amount of the prepayment required by Tenrod that is specified in a Work Order.

Fees means the amount we will charge you for the supply of the Services as confirmed in a Work Order.

Intellectual Property means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity wherever those rights might arise, including (without limitation):

- (d) copyright, patent rights, designs, rights in circuit layouts, plant breeder's rights, trade marks, rights in relation to inventions, and all other results of intellectual effort in the scientific, industrial, literary or artistic fields, whether or not registered or capable of registration;
- (e) any application or right to apply for registration of any of those rights;
- (f) any registration of any of those rights or any registration of any application referred to in item (b); and
- (g) all renewals and extensions of those rights.

Work Order means a written order for Services submitted by us to you incorporating the terms of the Quote as agreed between the parties and in accordance with clauses 3.2 and 4.1(d).

Personnel of a party means its employees, agents and contractors.

Quote means the preliminary document we provide to you for each Work Order describing the Services (and Deliverable(s)) we will supply, the Fees, payment terms and a timetable setting out the proposed stages in which the Services and/or Deliverable(s) will be supplied.

Services has the meaning given to it in clause 3.1 and are described in a Work Order.

Software means any executable machine readable program and does not include the source code for that program.

Stage means the stage(s) in which the Services will be supplied as set out in a Work Order.

Timetable means the final timetable setting out the stages in which the Services and/or Deliverables will be completed and supplied as agreed between the parties and set out in a Work Order.

Updated Work Order has the meaning given to it in clause 5.2.

2 Interpretation

2.1 In these terms and conditions, unless the contrary intention appears otherwise:

- (a) words in the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) a reference to a person includes a partnership and a body, whether corporate or otherwise; and
- (c) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document.

3 Services

3.1 Broadly, the Services we supply can be categorised as follows:

- (a) software development services;
- (b) turnkey engineering services and manufacturing services; and
- (c) design work for new products (including development of prototypes).

3.2 When you submit a request to us for any one or more of the above Services, we will provide you with a Quote. The Quote is intended to scope the Services and the costs of the Services and provide details of any other matters we think are relevant. The issue and approval of the Quote does not give rise to a binding contract. If you want us to provide the Services specified in the Quote, you must accept the Work Order we give to you after you approve the Quote.

3.3 If you require us to source a manufacturer arising out of the Services we supply, we will do so under a separate agreement between us.

4 Quotation, Work Order and Deposit

4.1 No binding contract for the supply of the Services comes into existence and, we will not start performing the Services until:

- (a) you request Services from us;
- (b) we provide you with a Quote; and
- (c) you approve our Quote;
- (d) we provide you with a Work Order; and
- (e) you accept the Work Order by signing it and returning it to us and paying the Deposit in full.

5 Modifications

5.1 You must submit a request for any modifications to the Services described in a Work Order to us in writing.

5.2 On receipt of a request from you under clause 5.1, we will provide you with an Updated Work Order which you may accept or decline in writing.

5.3 If you do not provide us with written acceptance of our Updated Work Order, we will not undertake the requested modifications to the Services in the relevant Work Order.

5.4 You acknowledge that any request submitted by you to us in accordance with clause 5.1, may affect the date on which the Services are completed. If we require more time to complete the Services, we will notify you of this in the Updated Work Order.

6 Delivery of Services

6.1 We agree to perform the Services with due care and skill in accordance with the Timetable and other specific requirements made known to us before we give you a Work Order and confirmed in that Work Order.

6.2 Subject to clauses 5.4, 7, 10.2 and 19.4 of these terms and conditions, we will supply the Services to you on the date for completion identified in the Timetable.

7 Completion of Software

7.1 If specified in the Work Order, you are responsible for testing of the Software and must notify us in writing within 21 days of delivery, or within the time specified in a Work Order, if the Software does not meet or exceed the specifications in the Work Order.

7.2 If we agree that the Software does not meet the specifications in the Work Order, we will endeavour to correct the Software and resupply it to you within 30 days.

7.3 You will then have a further 7 days to re-test the Software and notify us in writing of any other inconsistencies with the specifications in the Work Order. This process will be repeated until the Software complies with, or exceeds, the specifications in the Work Order.

7.4 We will deem the Services to have been satisfied if:

- (a) you do not notify us in accordance with clauses 7.1 and 7.3; or
- (b) if you put the Software to use.

8 Fees

8.1 The Fees set out in each Quote will be confirmed in the Work Order we provide for that Quote.

8.2 The Fees do not include any sales tax, goods and services tax, stamp duty and all other excises and duties that may be imposed in relation to these terms and conditions or the supply of the Services by us. Each of them is payable by you and, if paid by us, must be reimbursed on demand.

9 Invoicing and Payment

9.1 We will give you a tax invoice at the end of each Stage.

9.2 You agree to pay us the amounts shown in our tax invoice immediately or in accordance with the process set out in the Work Order.

10 Delay in Payment

10.1 Subject to clause 11, if you fail to pay our tax invoice within 7 days of the date of that tax invoice, we will immediately suspend the supply of all the Services until you have paid our outstanding tax invoice(s) in full.

10.2 Where we suspend supply of the Services in accordance with clause 10.1, the date for completion of the Services specified in the Timetable will also be extended for the number of days that accrue from the due date for payment of the invoice(s) and the date that the invoice(s) is actually paid by you.

10.3 We also reserve the right to charge interest on any outstanding invoice at an annual rate equal to 2% above the cash rate target notified by the Reserve Bank of Australia from time to time.

11 Dispute

11.1 If you dispute the whole or any part of an amount invoiced by us, you must pay the portion of the invoiced amount not in dispute and must notify us in writing of the reasons for disputing the remainder of the invoice.

11.2 If it is resolved that some or all of the disputed amount ought properly to have been paid at the time it was invoiced, then you must pay the unpaid amount to us immediately.

12 Implied Warranties

12.1 Terms, conditions and warranties implied by law which cannot be excluded, restricted and modified apply to our supply of the Services to the extent required by that law.

12.2 We exclude to the extent permitted by law all other terms, conditions and warranties which might be implied into an agreement with you.

12.3 You do not rely on any representation, warranty or other provision made by or for us which is not expressly stated in our agreement with you.

13 Intellectual Property

13.1 You retain any and all Intellectual Property rights held by you in any engineering and working instructions, specifications, drawings, designs, writings, samples, layouts, operating and test software which you provide to us in relation to the supply of the Services.

13.2 We retain any and all rights to Intellectual Property rights held by us in any Deliverables which we create in the course of supplying the Services to you.

13.3 We will grant a non-exclusive, perpetual licence to make use of, market and sell the Deliverable.

13.4 We will execute all documents and do all other things required by you for the purpose of giving effect to clauses 13.1 and 13.3.

14 Infringement of Intellectual Property Rights

14.1 If any part or all of the Deliverables we supply to you are claimed to infringe on the Intellectual Property rights of a third party, or where a risk of such infringement arises, you accept that we, at our discretion may either:

- (a) obtain the right from the legitimate holder of the Intellectual Property rights for you to continue use; or
- (b) modify or resupply the Services so as to bring an end to the infringement.

Should none of these options be available on terms considered fair to us, we will stop, on our request, using the Deliverables we supplied to you.

15 Confidential Information

15.1 Each party (**Recipient**) must keep confidential, and not use or disclose to a third party, any confidential information disclosed by another party (**Disclosing Party**) without the prior written consent of the Disclosing Party, except as is permitted under these terms and conditions or as is required by Law.

16 Insurance

16.1 We agree to maintain insurance cover for public liability and professional indemnity insurance when supplying the Services for you. Details of these policies are available on request.

17 Limitation of Liability

17.1 Subject to our liability under clause 17.3, you release us from any liability to you for any loss or damage suffered by you arising from or related to our supply of the Services to you.

17.2 In this clause 17:

- (a) **loss or damage** includes loss or damage caused by the loss of or damage to property, personal injury or death, damage to reputation or goodwill, as well as loss of profits, increased operating or maintenance expenses or any indirect or consequential loss.
- (b) **supply of the Services** means the supply or non supply of the Services including but not limited to an act or omission that constitutes or results in negligence, or other tort, or in a breach or alleged breach of contract or statutory duty.

17.3 If you are a consumer within the meaning of the *Trade Practices Act 1974* (Cth), then our sole liability for breach of an implied statutory condition or warranty in relation to the Services we supply is limited at our option to:

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

18 Termination

18.1 Either party may terminate an agreement containing these terms and conditions immediately:

- (a) if the other party becomes, or threatens to become, or is in jeopardy of becoming,

subject to any form of insolvency administration; or

(b) for any reason on giving 7 days notice in writing.

18.2 Upon termination of an agreement containing these terms and conditions by you, we will immediately stop supplying the Services.

18.3 If you terminate under clause 18.1(b), you will pay us reasonable compensation for all work done in accordance with the Quote up to the date of termination and for so long as the amount does not exceed the total Fees payable.

18.4 If an agreement containing these terms and conditions is terminated by either party, the Deposit will not be refunded by us to you.

18.5 Termination does not affect any accrued rights or liabilities of either party nor does it affect any provision which is expressly or by implication intended to operate after termination.

19 General

19.1 If any provision or paragraph of these terms and conditions is determined to be illegal or unenforceable, it will not affect the enforceability of any other provision or paragraph of these terms and conditions.

19.2 Any variation to or waiver of a provision of these terms and conditions is effective only if in writing and signed by us.

19.3 A failure, delay, relaxation or indulgence on our part in exercising any right conferred by us by these terms and conditions does not operate as a waiver of that right.

19.4 Neither party is liable for delay or failure to perform its obligations under these terms and conditions to the extent that the delay or failure is due to a cause beyond that party's reasonable control. Those events include, but are not limited to, war, labour disputes, equipment failure and acts of government.

19.5 Any notice given in respect of these terms and conditions must be in writing and given personally or delivered to the recipient's address last known to the person giving the notice. In the case of service by post, the notice will be deemed to have been served two days following the posting.

19.6 The construction, validity and performance of any agreement incorporating these terms and conditions will be governed by the laws of the State of New South Wales and you will submit to the non-exclusive jurisdiction of the New South Wales Courts.