

These terms and conditions ("Terms") apply between:

CN KALLAROO GROUP PTY ACN 661 774 821 of [12 Sulina Place, Kallaroo WA 6025] ("CN KALLAROO") and

Customer, which means the person or entity agreeing to the provision of specified Services by CN KALLAROO.

## 1. DEFINITIONS:

**Agreed Rate** means the rate payable by the Customer to CN KALLAROO for provision of Personnel to provide the Services. The agreed rate maybe hourly, daily, daily-part thereof or on final completion of works or project but will be set out in the CN KALLAROO quote and agreed prior by the Customer.

**Business Day** means a day that is not a Saturday, Sunday or Public Holiday in Perth, Western Australia.

**Claim** includes, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future, or contingent.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Defaulting Party** means a party in respect of which any of the following events occur: the Defaulting Party commits a material breach of the Service Agreement, whether written or oral, which is incapable of being remedied or, if the breach is capable of being remedied, the Defaulting Party fails to remedy the breach within 10 Business Days after being given notice of the breach by the other party; the Defaulting Party is subject to an Insolvency Event; or the performance by the Defaulting Party of its obligations under a Service Agreement becomes or remains affected by an event of Force Majeure for a period in excess of 20 Business Days; where the Defaulting Party is the Customer, payment due under the Service Agreement has not been made within 10 Business Days after issuance of an invoice.

**Expenses** means any travel, hotel or other expenses incurred by Personnel in the course of providing the relevant Services to the Customer that are reimbursable to the Personnel by CN KALLAROO, plus 10%.

**Fees** means CN KALLAROO fee for arranging (including paying for) any activities requested by the Customer or otherwise required to enable a CN KALLAROO Personnel to provide the relevant Services to the Customer, including: the assessment of the medical suitability and capability of the Customer or Locations; arranging the accommodation, meals, and travel for; and the mobilization and demobilization of, the Personnel, to be calculated as the cost of the activity to CN KALLAROO plus 10%.

**Force Majeure Event** means an act of God, war, riot, insurrection, vandalism or sabotage, strike, lockout, ban, public health emergency, governmental regulations or other industrial disturbance which prevents the fulfilment of obligations, provided that it is not limited to the affected party alone, which is unforeseen by the affected party, is beyond the reasonable control of the affected party and occurs without the fault or negligence of the affected party.

**Insolvency Event** in respect of a party means the occurrence of any of the following events: the party becomes an externally-administered body corporate under the Corporations Act or steps are taken by any person towards making the party an externally administered body corporate; a controller has been appointed over any of the property of the party or any steps taken for the appointment of such a person; the party has been served with a demand under section 459F of the Corporations Act with which it is taken, under section 459F of the Corporations Act, to have failed to comply; a resolution is proposed or is passed by the shareholders or directors of the party in relation to any reduction of capital, compromise with any creditor or the appointment of any person to administer the affairs of the party; the party is insolvent; or any occurrence analogous to any of paragraphs above under the law of the jurisdiction in which the party is registered or carries on business.

**Intellectual Property** includes any: copyright (as defined in the Copyright Act 1968 (Cth)); design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for); trade, business, company or domain name; know-how, inventions, processes (whether in writing or recorded in any form); and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields.

**Location** means the location described at the time of agreement to provide a Service at which the relevant Personnel is to perform a Service.

**Loss** includes any damage, loss, cost, liability, Tax or expense of any kind and however arising (including as a result of any Claim), including penalties, fines, interest and legal costs.

**Normal Business Hours** are those hours of work which occur between 6am to 6pm in the Location where the works occur.

**Other Charges** means any other amounts or costs payable by CN KALLAROO in respect of CN KALLAROO Personnel providing the Services which are not provided for in the Agreed Rate (for example, additional loadings, penalties, leave and on costs arising due to the Personnel working greater hours than agreed when the Services were initially precluded by the Customer or for work performed outside Normal Business Hours), plus a 10% administration fee.

**Personnel** means a person who is engaged by CN KALLAROO in order to provide the Services to the Customer.

**Representative** means a person's officers, employees, agents, consultants, and contractors.

**Service or Services** means the services agreed to at the time of engagement of CN KALLAROO by the Customer. A service may be provided on-site or remotely.

**Service Agreement** means an agreement between CN KALLAROO and the Customer, whether oral or in writing, for Services by CN KALLAROO to the Customer. A Service Agreement consists of the commercial details (including Agreed Rate) set out in CN KALLAROO's quote and these terms and conditions.

## 2. CONTRACTUAL RELATIONSHIP

- i. A Service Agreement is formed as soon as a purchase order or written acceptance of CN KALLAROO's quote has been issued by the Customer.
- ii. The relationship between CN KALLAROO and the Customer is of a principal and an independent entity. Neither party is authorised or empowered to act as agent for the other for any purpose, and may not enter into any contract, warranty, or representation regarding any matter on behalf of the other.
- iii. Each Service Agreement whether oral or written incorporates these Terms, but each is a separate agreement between the parties independent of any other agreement entered into by the parties.

## 3. PROVISION OF SERVICES

CN KALLAROO obligations:

- i. CN KALLAROO will provide the Services as set out in the Service Agreement.
- ii. CN KALLAROO will use its reasonable efforts to: assess its Personnel's qualifications and experience prior to commencing Services for the Customer however despite its reasonable efforts to assess such, CN KALLAROO makes no representation and does not give any undertaking as to the background, integrity, medical or other physical suitability or capability, qualifications, or experience of its Personnel to

perform the relevant Services for which CN KALLAROO has been engaged by the Customer.

- iii. These Terms do not create any obligation on CN KALLAROO to identify and supply to the Customer appropriate Personnel within a particular timeframe, unless otherwise expressly stated agreed in the Service Agreement.

Customer obligations:

- i. The Customer acknowledges and agrees that: it must satisfy itself as to the background, integrity, medical suitability and capability, qualifications and experience of Personnel and Services provided by CN KALLAROO; and it is the sole responsibility of the Customer to determine whether or not proposed Personnel or Services should be engaged and/or retained.
- ii. The Customer must comply with: all statutes, laws and legal requirements in relation to the engagement of the personnel to which it is subject in respect of its own staff, including the obligation to protect the Personnel under laws with respect to discrimination and sexual harassment; and agrees that under no circumstances is the Personnel to perform any work outside the scope of the Services without first obtaining CN KALLAROO's written consent.
- iii. The Customer must (A) identify any work health and safety hazards specific to the provision of the Services by the Personnel at the location(s) and in the Personnel's work environment at the Location(s); (B) assess the risk to the health and safety of the Personnel associated with the provision of the Services at the Location(s) and take all reasonably practicable steps to eliminate any risks; where it is not reasonably practicable to eliminate a risk to the health and safety of the Personnel, the Customer must take all reasonably practicable steps to reduce any such risk(s); provide CN KALLAROO with a risk assessment that demonstrates that the Customer has taken action to eliminate; or where elimination is not reasonably practicable, to reduce, any risk to the health and safety of the CN KALLAROO Personnel; (C) provide to the Personnel all necessary induction, consultation, instruction, training and supervision to ensure that the Personnel is able to perform the Services at the Location(s) in a safe manner; consult, cooperate and coordinate with CN KALLAROO, and (D) provide any other relevant information and reasonable assistance to CN KALLAROO, as necessary for CN KALLAROO to be able to verify that the Customer has taken these actions; and confirm on commencement of the Services that the Customer has undertaken these tasks and taken all reasonably practicable steps to eliminate any risk to the health and safety of the Personnel.
- iv. The Customer must immediately advise CN KALLAROO in writing of any injury to, or any workplace incident that may have impacted upon, Personnel.
- v. The Customer must provide all assistance to CN KALLAROO necessary to enable CN KALLAROO to perform the Services, as reasonably requested by CN KALLAROO. If the Customer fails to do so, or any matter upon which a Service is based proves to be incorrect, the Customer agrees to negotiate in good faith with CN KALLAROO to adjust the Service Agreement to take account of that fact.
- vi. The Customer acknowledges and agrees that Personnel can be an employee or an independent consultant or contractor of CN KALLAROO.

## 4. PAYMENT TERMS & OBLIGATIONS

- i. In consideration for the supply of the Services, the Customer agrees to pay CN KALLAROO (A) the Agreed Rate for all hours performed in undertaking the Services, the Other Charges; Fees, the administration fees (if any); and the Expenses, applicable to Personnel performing the Services, and/or (B) a project completion fee or part-completion fee at a rate or lump sum agreed prior to commencement of the project or Service.
- ii. The Customer agrees that a minimum charge out rate of 4 hours, per day or the actual time, whichever is the greater, will be paid to CN KALLAROO for any service or activity performed by CN KALLAROO that is related to the Services, this may include travel to and from a relevant location or work site, time spent completing inductions, training, obtaining site entry approval such as medicals and police clearances. However, if the service or activity occurs at a location other than in Perth Metropolitan Area, then the Customer agrees to pay a minimum charge out rate of 10 hours of the Agreed Rate, or 1 full day rate, whichever is the lesser real amount.
- iii. If during the provision of Services there is a change in scope of the engagement on request of the Customer which causes an increase in any component of the Agreed Rate, or any pre-agreed Fees or Expenses CN KALLAROO may increase the quoted Agreed Rate, or any pre-agreed Fees or Expenses by the amount of that increase with immediate effect by giving the Customer 7 days notice of that increase.
- iv. Services will be charged for any time spent working for the Customer and will not be limited to the time spent on-site or in Location (in the interests of clear communication, the Customer will be charged for services performed by CN KALLAROO regardless of location and regardless of whether the Customer or its representatives are present).
- v. CN KALLAROO will invoice the Customer weekly for the Services and the Customer must pay each invoice within 14 Business Days after issue.
- vi. Invoices must be paid by the Customer by EFT into CN KALLAROO bank account, as detailed on CN KALLAROO invoices.
- vii. Invoices must be paid by the Customer in Australian dollars.
- viii. If the Customer is required to make a deduction under any Tax law from the payment due to CN KALLAROO (eg. withholding tax), the amount of the payment due must be increased to an amount which, after making any Tax deduction, leaves an amount equal to the payment that would have been due if no Tax deduction had been required.
- ix. If the Customer requires the Services to be performed on non-Business Days or outside Normal Business Hours or in a location other than Perth metropolitan area, the Customer agrees to immediately notify CN KALLAROO, and the Customer must pay CN KALLAROO an increased Agreed Rate in respect of the Services; accordingly, and any such increase will be invoiced as a new rate.
- x. If the Customer disputes any part of an invoice, it must notify CN KALLAROO within 7 Business Days after issue of the invoice by CN KALLAROO and otherwise pay all other parts of the invoice not in dispute.

## 5. INSURANCE, LIABILITY AND CONSEQUENTIAL LOSS

Insurance:

- i. CN KALLAROO must maintain suitable public liability and professional indemnity insurance, with cover to \$20,000,000 for public liability insurance and \$1,000,000 for professional indemnity insurance; and provide to the Customer, when requested by the Customer, a certificate of currency for all required insurances.
- ii. The Customer must maintain suitable public liability and professional indemnity insurance, with cover to \$20,000,000 for public liability insurance and \$5,000,000 for professional indemnity insurance; and provide to CN KALLAROO, when requested by CN KALLAROO, a certificate of currency for all required insurances.

Liability and Indemnity:

- i. To the extent permitted by law, the Customer shall indemnify CN KALLAROO, and its respective Representatives against all Losses incurred in connection or relation to Claims brought by third parties arising out of or in connection with

(whether directly or indirectly) the performance of the Service Agreement (including activities of Personnel performing Services); excluding the liability of CN KALLAROO arising out of or in relation to Service Agreement to pay CN KALLAROO Personnel his or her entitlements as an employee, consultant or contractor of CN KALLAROO (if applicable).

ii. The Customer indemnifies CN KALLAROO and its Representatives against all Losses incurred or suffered arising out of or in connection with: (A) any breach of the Service Agreement by the Customer; (B) any act, error or omission of Customer (whether negligent, fraudulent or otherwise) arising out of or in connection with the performance of the Services; (C) any personal injury, death, or property damage arising out of or in connection with the performance of the Services (including Personnel performing Services in accordance with a Service Agreement).

iii. The Customer agrees that although care and attention will be taken, that all advice, audit and investigation findings, any policy or procedural development undertaken or provided, or any other Services, provided by CN KALLAROO, to or for the Customer, should undergo separate legal and commercial review, approval and endorsement by the Customer prior to implementation and/or before any action is taken to follow the advice or findings provided by CN KALLAROO, as such the Customer agrees that CN KALLAROO, its Representatives and Personnel shall not be held liable for any adverse or unintended outcome and any Loss suffered by the Customer or agent or public as a consequence of the Services provided by CN KALLAROO.

iv. To the extent permitted by law and excluding any liability for fraud of any CN KALLAROO Personnel, CN KALLAROO's liability under the contract for breach of any guarantee, warranty or obligation under this Service Agreement, express or implied, is limited to the resupply of the Services again or the amount payable under the Service Agreement up until the date of the incident occasioning liability.

v. This clause does not apply to the extent liability cannot be waived, limited and/or excluded at law.

Consequential loss:

i. Neither party is liable to the other arising out of or in connection with a Service Agreement for indirect or consequential loss or damage, including any loss of business, profits, data or goodwill.

**6. NO WARRANTY**

i. All warranties and representations whether express or implied by law, trade, custom or otherwise are excluded to the extent permitted by law.

**7. TERMINATION**

i. If a party is a Defaulting Party, the other party may, at its option, terminate all outstanding Service Agreements with immediate effect by giving a notice to the Defaulting Party; or treat the Service Agreement(s) as continuing but terminate (with immediate effect) the Service it considers, in its absolute discretion, to be adversely affected by the circumstances of the default, by giving a notice in writing to the Defaulting Party.

ii. Either party may terminate any Service Agreement without cause by giving 7 Business Days' notice to the other party.

iii. If full payment of an invoice is overdue by more than 10 Business Days, CN KALLAROO may by notice to the Customer terminate all current Service Agreements with immediate effect and without providing any compensation and may suspend supply of the Services without giving rise to a breach of the Service Agreement or a right to compensation; set off any other payments the Customer may have made against amounts due; and/or charge the Customer interest calculated daily and compounded monthly at 4%, together with the costs of recovery (including, on a full indemnity basis, any legal costs).

iv. The Customer agrees that, if Services to be provided by CN KALLAROO are cancelled or suspended by the Customer within 10 Business Days prior to the planned commencement date, the Customer will pay 50% of the agreed total of the agreed term (based on the Agreed Rate), or 2 days day rate (based on the Agreed Rate), whichever is the greater, to CN KALLAROO within 7 Business Days after termination as a genuine pre-estimate of CN KALLAROO's losses and in compensation for the cancellation of Services and for which CN KALLAROO may have turned away business with another Customer.

v. The Customer agrees that if a Service Agreement or part thereof is terminated post the issue of a purchase order and after commencement of the Services, the Customer must pay to CN KALLAROO within 7 Business Days after its termination the Agreed Rate, Fees, Other Costs and Expenses for all Services performed up until the date of termination and/or if any portion has been agreed to be paid on a project/lump sum basis, then an amount equal to the cost of all work performed calculated at standard CN KALLAROO rates, whether the work has come to a conclusion or remains unfinished to the date of termination and any reasonable additional expenses incurred by CN KALLAROO in performing the Services up until the date of termination.

vi. The termination of a Service or these Terms for any reason will not affect any obligations or rights of either party which have accrued on or before termination.

vii. All of the rights and obligations of each party under these Terms which are expressed to, or which by their nature or context must, survive termination of the Service or these Terms.

**8. CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY**

i. Except as stated in these Terms, a party must not use or disclose any Confidential Information of the other party without the prior written consent of the other party.

ii. Each party may disclose the Confidential Information of the other to its Representatives and advisers to the extent that they require the information for the purposes of the provision of services, including obtaining advice in relation to, or in respect of legal proceedings in relation to, these Terms or a Service Agreement; and to the extent required by law or a regulatory authority.

iii. Obligations on either party are not applicable if said Confidential Information was or has been made publicly available (not due to a breach of this Agreement); the party obtained such information on a non-confidential basis from a third party, without breach by that third party of any obligation of confidence concerning that Confidential Information; or such information was already in the party's possession (as evidenced by written records) when provided by the other party.

iv. Nothing in these Terms or any Service Agreement affects the ownership of any existing Intellectual Property rights of either party and, subject to any express grant of rights under a Service Agreement, all rights relating to the pre-existing Intellectual Property rights of each party are reserved to that party. Unless otherwise expressly agreed, Intellectual Property rights which arise in the performance of CN KALLAROO Services or in any working papers, reports or data by CN Kallaroo's Personnel (excluding any Customer Information reflected in them) vest in CN KALLAROO, unless such Services involve the modification or adaptation of existing Intellectual Property owned by the Customer, in which case the Intellectual Property rights arising out of the performance of the Service in relation to such modification or adaptation vest in the Customer upon payment for the Services. Upon payment for the particular Services, the Customer is

granted a non-exclusive licence to utilise reports or other final materials provided by CN KALLAROO to the Customer for the express purpose of the engagement.

- v. If the Customer requires CN KALLAROO to enter into a non-disclosure or confidentiality agreement beyond the provision of these Terms then the Customer must divulge this requirement to CN KALLAROO prior to the issue of the purchase order and prior the commencement of services by CN KALLAROO. The administration of any such agreement, including any legal costs or fees incurred by CN KALLAROO in the negotiation or implementation will be charged to the Customer at the cost or fee incurred by CN KALLAROO plus 12.5%, and a one-off administration fee payable to CN KALLAROO by the Customer of \$1700.00.
- 9. PRIVACY**
- i. The Customer agrees to preserve the privacy of personal information concerning the Personnel and any other personal information it receives as part of the Services, or is accessed by the Customer, to a standard not less than that prescribed by the *Privacy Act 1988* (Cth).
- 10. FORCE MAJEURE**
- i. If a party is prevented by a Force Majeure Event from performing its obligations under these Terms or a Service Agreement, then: the affected party must notify the other party immediately after it becomes aware of the Force Majeure Event affecting its performance and the steps it is taking to remedy it; the performance of that party's obligations is suspended to the extent they are prevented by the Force Majeure Event; and the non-performance or delay in performance of those obligations is deemed not to be a breach of these Terms or Service Agreement.
- 11. DISPUTES**
- i. If a dispute arises between the parties in respect of a Service Agreement, then: the party that wishes to raise the dispute must notify the other party in writing of the nature of the dispute.
- ii. The notification must state that it is a "Dispute" under these terms: A senior Representative from each party with authority to resolve the dispute must meet within 7 Business Days after notification of the dispute is issued, to attempt to resolve the dispute; any meetings or discussions held between the Representatives of the parties to attempt to resolve the dispute will be held on a without prejudice basis; if the dispute is resolved, the resolution will be documented in writing and signed by the parties; and if the dispute is not resolved between the parties' Representatives within 14 Business Days either party may commence legal proceedings in relation to the dispute.
- iii. During a dispute, the parties must continue to perform their obligations under these Terms and any Service Agreement, unless the dispute relates to the health and safety of the Personnel.
- iv. Despite the aforementioned, either party may seek urgent interlocutory relief.
- 12. GST**
- i. In this clause GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (GST Act) or any replacement or other relevant legislation and regulations; words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires; and if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- ii. Unless GST is expressly included, the consideration to be paid or provided under these Terms or a Service Agreement for any supply made under or in connection with these Terms or a Service Agreement does not include GST.
- iii. To the extent that any supply made under or in connection with these Terms or a Service Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for with respect to that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided.
- iv. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.
- 13. NOTICES & COMMUNICATIONS**
- i. A notice may be sent by prepaid post, electronic mail or delivered by hand to the address or email address of the receiving party as specified in the quote or purchase order or as subsequently notified in writing, and will be treated as received by the party to which it is addressed: if sent by post to an address in Australia, on the 3rd Business Day after posting; if sent by email, on the day and at the time it is sent (as recorded on the sender's equipment); or if otherwise delivered, upon delivery, provided that a notice delivered after 5pm on a day that is not a Business Day at the place of its receipt is treated as given at 9am the following Business Day.
- 14. GOVERNING LAW**
- i. These Terms, any Service Agreement and the supply of the Services will be governed and construed in accordance with the laws of Western Australia and the parties hereby agree to submit to the exclusive jurisdiction of a competent court in Western Australia.
- 15. GENERAL**
- i. These terms and any Service Agreement between CN KALLAROO and the Customer may only be varied by written agreement between authorised representatives of each party.
- ii. The Customer may not subcontract, assign or otherwise transfer these Terms or any Service Order in whole or in part, without the prior written consent of CN KALLAROO.
- iii. No express or implied waiver by either party of any term of these Terms or of a Service Agreement will constitute a waiver, unless in writing and signed by the party providing the waiver.
- iv. These Terms and any Service Agreements made under it constitute the entire agreement between the parties and supersedes all prior agreements, representations or statements whether oral or written, made by or on behalf of the parties. Any purchase orders submitted by the Customer are for internal administrative purposes only and the terms and conditions in any purchase orders shall have no force and effect.
- v. If any provision of these Terms or a Service Agreement is held to be invalid or unenforceable, it will be severable and not affect the remaining provisions of these Terms or Services (as applicable).
- vi. The parties acknowledge that, except as set out in these Terms or a Service Agreement, they do not enter into these Terms or a Service Agreement as a result of or in reliance on any promise, representation, advice, statement or information of any kind given or offered by the other party, whether in answer to any enquiry or not. The parties exclude all implied terms to the extent permitted by law.
- vii. Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of these Terms and any Service Agreement.