

## TERMS AND CONDITIONS

**Registered Trading Name:** Darwin Inspection and Testing Service (**DITS**)  
**ABN:** 94 057 337 274

### 1. Definitions and Interpretations

- (a) In this Agreement the following expressions will have the following meanings:
- (i) **Agreement** means any agreement between DITS and the Client as agreed to in writing by each of the parties, which shall implicitly incorporate these Conditions and any other documents attached or incorporated by reference.
  - (ii) **Client** means the any individual, organisation or other party who engages the services of DITS and includes all directors, employees, consultants, agents, contractors and sub-contractors of that individual, organisation or other party;
  - (iii) **Conditions** means these terms and conditions.
  - (iv) **DITS** means Darwin Inspection and Testing Service and includes all directors, employees, consultants, agents, contractors and sub-contractors of DITS;
  - (v) **Force Majeure** means circumstances beyond the control of the party including, without limitation, requisition by any government authority or the effect of any statute, ordinance or governmental order or regulations, wars, strikes, lockouts, riots, epidemic disease, act of god, civil commotion, fire, earthquake, storm, explosion, terrorism, malicious damage, sabotage, civil or industrial disturbances and failure of public utilities, common carriers or suppliers;
  - (vi) **Service** means the services to be provided by DITS to the Client, more particularly described in the agreement and where the context admits will include any part thereof;
  - (vii) **Services Charge** means the fee payable by the Client to DITS in exchange for the performance of the Services as agreed to in writing by DITS;
  - (viii) **Variation** means any change to the Services including but not limited to:
    - (A) the addition or reduction of features or services;
    - (B) the addition or reduction of equipment and/or software;
    - (C) the use of existing equipment and/or software in a different configuration or for a different purpose.
  - (ix) **we, us or our** means Dits; and
  - (x) **you or your** means the Client.
- (b) Any reference in these terms and conditions to the singular includes the plural, to any gender includes all genders, to any Act or statute includes any Act or statute which supersedes, replaces or modifies any earlier Act or statute, to persons includes all bodies and associations both corporate and unincorporate and vice versa, and paragraph headings are for reference purposes only.

### 2. Operation of Conditions

- (a) These Conditions apply to the supply of Services by DITS to the Client and represent the entire agreement between DITS and the Client. These Conditions prevail over any terms in any other agreement between DITS and the Client except to the extent that DITS has expressly agreed otherwise in writing.

### 3. Provision of Services

- (a) DITS will provide the Client with the Services in accordance with these Conditions or any Agreement, as requested by the Client from time to time, in consideration for payment of the Services Charge, where those requests for the provision of the Services have been explicitly and in writing accepted by DITS.
- (b) Any Variation to the provision of the Services will be subject to the express agreement in writing by DITS.
- (c) DITS will perform the Services within any time period expressly agreed to in writing by DITS, or failing any express agreement, a reasonable period of time.
- (d) DITS will perform the Services in accordance with:
  - (i) these Conditions and any Agreement;
  - (ii) any relevant legislation, regulation or other governing law;
  - (iii) any method, custom or practice as considered necessary or appropriate by DITS for any technical, financial or operational reason;
  - (iv) any specific instructions provided by the Client as agreed to by DITS.
- (e) DITS will ensure that it performs the Services in a skilful, efficient and courteous manner, and using reasonable care and skill.
- (f) To the extent that they are reasonably required to enable DITS to perform the Services, the Client will throughout the period DITS is performing the Services promptly provide DITS with complete and accurate information concerning its operations as required by DITS, and provide answers to any questions or decisions made by the DITS in relation to the Services.
- (g) DITS will perform the Services at any location considered necessary in the sole discretion of DITS. Where DITS is required to work on the Client's premises, the Client will:
  - (i) provide DITS free of charge with such space and services as may reasonably be necessary to enable DITS to perform the Services;
  - (ii) ensure that DITS is provided with all access and permissions deemed necessary by DITS to perform the Services;
  - (iii) supply, if required, any special equipment and personnel necessary for the performance of the Services;
  - (iv) ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of Services;
  - (v) inform DITS of any known or suspected hazards or dangers, actual or potential, associated with any materials, equipment, samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons.
- (h) DITS shall keep sufficient records of all acts and things done by it in relation to the provision of the Services and at the Client's request will make them available for inspection and/or provide copies to the Client at the Client's own cost in addition to payment of the Services Charge.
- (i) DITS may at any time delegate all or part of the performance of the Services to a suitably qualified person, and the Client authorises DITS to disclose any necessary information to that person for the purposes of carrying out the Services.
- (j) Any advice, finding or conclusion communicated by DITS to the Client in respect of the Services shall only reflect the opinion of DITS at the time that advice, finding or conclusion is communicated to the Client. DITS reserves the right to withdraw, replace or change any advice, finding or conclusion upon further communication of that fact to the Client.
- (k) The Client acknowledges that DITS, by providing the Services:

- (i) does not take the place of the Client or any other party;
  - (ii) does not release the Client or any other party from any obligation they may have at law or otherwise to any other party or entity;
  - (iii) does not releases the Client or any other party from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of the Client to any other party or that of any other party to Client.
- (l) DITS will incur no liability to the Client by reason of any delay in the performance of the Services if:
- (i) such a delay is due wholly or partly to any act or omission of the Client;
  - (ii) the delay is due to Force Majeure;
- (m) In the event of any such delay as set out above, DITS will have the right to an extension of time to perform the Services by such reasonable period having regard to the nature of such delay.

#### **4. Client's Obligations**

- (a) The Client will:
- (i) comply at all times with these Conditions;
  - (ii) pay to DITS the Services Charge in accordance with these Conditions;
  - (iii) nominate a person with the necessary knowledge and experience relevant to the provision of the Services and with the requisite knowledge of the Client's business (including but not limited to the Client's organisation and its operations and business practices) as its representative and as the prime point of contact with DITS and through whom all communication with DITS will be made;
  - (iv) ensure that instructions are provided to DITS in a timely manner to allow the efficient performance of the Services;
  - (v) promptly respond to any questions put to the Client by DITS;
  - (vi) fully comply with any relevant legislation, regulation or other governing law which may apply to its request to DITS for the provision of the Services.

#### **5. Fees and Payment**

- (a) Unless otherwise agreed in writing DITS will invoice the Client all or part of the Services Charge in respect of the Services on a monthly basis with 30-day payment terms (or any shorter period as agreed to by DITS and the Client).
- (b) The Client will pay not later than 30 days from the relevant invoice date (or any shorter period as agreed to by DITS and the Client) all fees due to DITS pursuant to that invoice.
- (c) Where the supply by DITS of goods or services is a taxable supply within the meaning of any relevant goods and services tax legislation the consideration payable by the Client will be increased by an amount equal to the goods and services tax that is payable.
- (d) DITS reserves the right to charge the Client interest in respect of the late payment of any sum invoiced under these Conditions at the rate of two percent per month on the amount outstanding from the date payment is due to the actual date payment is received. The Client will pay such interest upon demand.
- (e) If payment of any amount owing by the Client to DITS is not made and the due date for that payment has passed, DITS may at its discretion suspend the performance of the Services or any part thereof until payment in full is received. If upon resumption of the Services, DITS is required to carry out any services or incur any costs which but for the suspension would not have carried out or incurred the Client will reimburse the cost of any such service and costs, which will become payable. These costs will be payable by the Client in addition to the Services Charge.

- (f) DITS is entitled to charge the Client for travel time, the cost of travel, accommodation and subsistence, and expenses incurred by DITS in the course of providing any of the Services provided that DITS will on written request provide the Client with such evidence of such costs and expenses as reasonably required. These costs will be payable by the Client in addition to the Services Charge.
- (g) In the event any unforeseen problems or expenses arise in the course of carrying out the Services, DITS shall inform the Client within a reasonable period of time and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the Services. These costs will be payable by the Client in addition to the Services Charge.
- (h) If DITS is unable to perform all or part of the Services for any reason whatsoever outside of DITS' control, the Client will be required to pay to DITS:
  - (i) the amount of all non-refundable expenses incurred by the DITS subject to the provision of an invoice from DITS to the Client; and
  - (ii) a proportion of the Services Charge equal to the proportion of the Services actually carried out by DITS.
- (i) All amounts due to DITS by the Client will be paid in full without a deduction or withholding other than as required by law. The Client will not be entitled to assert any set-off or counterclaim against DITS in order to justify withholding payment of any such amount in whole or in part.
- (j) If payment of any amount owing by the Client to DITS is not made and the due date for that payment has passed, DITS may at its discretion suspend the performance of all or part of the Services until payment in full is received. If upon resumption of the Services, DITS is required to carry out any services or incur any costs which but for the suspension would not have been carried out or incurred, the Client will reimburse the cost of any such service and costs, which will become payable.

## **6. Liability and Indemnity**

- (a) Except as otherwise provided in this agreement and subject to all rights and remedies which are provided by law and which cannot be excluded by agreement, DITS will not be liable for any loss or damage directly or indirectly caused in connection with the performance or non-performance of the Services or any of its obligations under the Conditions or any other agreement between DITS and the Client, including but not limited to:
  - (i) loss or damage caused by any act or omission (including any negligent act or omission) of DITS;
  - (ii) damage caused to any property (real or otherwise) of the Client or any other party whether in transit, in storage, in the care, custody, possession or control of DITS, or subject to the performance of the Services;
  - (iii) any consequential loss or damage of the Client, including loss of profits, liability of the Client to third parties or the cost of repairing, replacing, collecting or re-delivering any goods or items;
  - (iv) loss or damage arising from any advice provided by DITS or any representations or negotiations;
  - (v) any action or inaction taken by the Client or any other party in whole or partial reliance on any advice, recommendation or conclusion communicated by or on behalf of DITS to the Client or any other party.
- (b) Regardless of the nature of any claim or action, whether in contract, tort (including negligence) or otherwise, any liability of DITS arising from or in connection with these Conditions or any other agreement between DITS and the Client will be limited to the maximum extent permitted by law, to one or more of the following as decided by DITS in its sole discretion:
  - (i) the re-supply of the Services by DITS;
  - (ii) the maximum value of the Services Charge.

- (c) Any claim by the Client against DITS arising from or in connection with these Conditions or any other agreement between DITS and the Client, including any objection by the Client to payment of any part of the Services Charge or any other sum claimed by DITS, will be made in writing to DITS within 14 days of the date of the happening of the event giving rise to the claim or the date of the relevant invoice. If no such claim is made, the Client will be conclusively deemed to have waived and foregone any such claim and to have accepted indebtedness for the full amount of any sum claimed by DITS.
- (d) The Client indemnifies and will keep indemnified DITS against all claims, liabilities, penalties, losses, costs and expenses DITS may incur arising out of providing the Services in accordance with these Conditions or any other agreement between DITS and the Client.

## **7. Termination**

- (a) Without affecting any other rights it may have at law or otherwise, DITS is entitled to terminate or suspend any agreement it has with the Client, or the performance of the Services with immediate effect by giving written notice to the Client, if the Client:
  - (i) breaches any provision of these Conditions and has failed to remedy the breach within seven days after receiving notice requiring it to do so;
  - (ii) ceases to be able to pay its debts as they become due; or
  - (iii) become subject to any form of insolvency or administration.
- (b) If DITS exercises any rights it has to terminate any agreement it has with the Client or suspend performance of the Services (whether pursuant to this clause or otherwise), DITS will be entitled to invoice the Client and the Client will be required to pay DITS the full amount of any unpaid Services Charge.
- (c) This clause does not limit or affect any other remedy which may be available to DITS at law including seeking compensation for any loss or damage suffered by DITS.

## **8. Waiver**

- (a) A waiver by either party of any breach or a failure to enforce or to insist upon the observance of any terms of these Conditions will not be a waiver of any other or of any subsequent breach.

## **9. Severability**

- (a) If the whole or any part of these Conditions is invalid, unenforceable, illegal, void or voidable for any reason, these Conditions will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from these Conditions or read down to the extent necessary to overcome the difficulty.

## **10. Successors and assigns**

- (a) These Conditions will be binding on and continue for the benefit of each party, its successors and assigns.

## **11. Further assurances**

- (a) The parties will do everything reasonably necessary to give effect to these Conditions and to the transactions contemplated by it and will use all reasonable endeavours to cause relevant third parties to do likewise.

## **12. Assignment**

- (a) These Conditions are personal to and will not be assigned by either party without the consent in writing of the other.

## **13. Continuing obligations**

- (a) The expiration or termination of these Conditions does not operate to terminate any of the continuing obligations under these Conditions and they will remain in full force and effect and binding on the party concerned.

**14. Applicable law**

- (a) These Conditions are governed by and construed in accordance with the law of the Northern Territory and the Commonwealth of Australia and the parties irrevocably submit to the jurisdiction of the courts of that Territory and of the Commonwealth.

## 15. Force Majeure

- (a) No party is responsible or liable to any other party for, nor will the operation of these Conditions be terminated as a result of, that party's failure to perform any of its obligations under these Conditions, with the exception of payment of monies due, if such failure results from Force Majeure.
- (b) A party is not entitled to the benefit of the provisions of the immediately preceding paragraph under any of the following circumstances:
  - (i) to the extent that the failure was caused by the contributory negligence of that party;
  - (ii) to the extent that the failure was caused by that party having failed to take reasonable steps to remedy the condition and to resume the performance of such obligations as soon as practicable;
  - (iii) unless as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect that party's ability to observe and perform its obligations contained in these Conditions that party has given to the other parties written notice that the former party is unable by reason of Force Majeure (the nature of which must be specified) to perform the particular obligations.
- (c) A party is only entitled to the benefit of Force Majeure if:
  - (i) it uses reasonable efforts to avoid or remove any such cause and resumes performance under these Conditions as soon as possible after removal of the cause, provided however that it is not required to settle any labour dispute or to commence, continue or settle any litigation; and
  - (ii) gives notice as soon as possible after the Force Majeure condition has been remedied or ceased to exist to the effect that the same has been remedied and that the party has resumed or is then in a position to resume the performance of such obligations.
- (d) If the cause of the delay continues for a period of more than 30 days any of the parties to these Conditions (other than the party claiming force majeure) may terminate the agreement created by these Conditions by written notice to the other parties without penalty.