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ABN 93 088 737 320

A division of  
G J & S E Murray Pty Ltd

## EXPERTEYES GENERAL TERMS

**BETWEEN:** EXPERTEYES ABN 93 088 737 320 of 34 Dean Street, Toowong, Queensland

AND: #####Limited ACN ### ## of ##### ("Licensed Organisation")

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Applicability

These General Terms apply without modification to all services and products requested by the Licensed Organisation from Experteyes unless otherwise agreed in writing signed by the Licensed Organisation and Experteyes and irrespective of anything that maybe stated in any order or document issued by the Licensed Organisation.

#### 1.2 Definitions

Capitalised terms used in this document have the meaning below:

**"GST"** has the same meaning as in the GST Act;

**"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999;

**"Intellectual Property Rights"** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

**"Enhancements"** means alterations, modifications or improvements made to the Licensed Works;

**"Invoice Amount"** means the amount specified in any invoice issued to the Licensed Organisation by Experteyes for services and products provided by Experteyes at the request of the Licensed Organisation calculated in the manner stated in the Supply Agreement and if none is stated at the fee rates ordinarily charged by Experteyes;

**"Licensed Materials"** means the literary and artistic works, sound recordings and cinematograph films as defined in the Copyright Act 1968 comprised in the Safety Topic Resources including Enhancements;

**"Project"** means an engineering or construction development specified in the Special Terms;

**"Safety Topic Resources"** means paper copies and laminated paper copies of Posters and Toolbox Cards (**"Paper Resources"**) and DVD Slideshow with voice over, Slideshow in pdf format and Posters and Toolbox cards in pdf format as badged by Experteyes for the Licensed Organisation and Cartoon depictions in jpg format and any other materials specified in the Supply Agreement;

**"Supply Agreement"** means an agreement made between Experteyes and the Licensed Organisation comprising certain special terms governing the supply of services and products to the Licensed Organisation (**"Special Terms"**) and these General Terms;

**"Term"** means the period of time specified in the Supply Agreement unless earlier terminated.

#### 1.3 Interpretation

These General Terms shall be read with the Special Terms and together they shall form the Supply Agreement.

## **2. FEES**

- 2.1** The Licensed Organisation must pay to Experteyes, without any reduction, set off or cross claim the Invoice Amount.
- 2.2** The Invoice Amount must be paid to Experteyes within 30 days of the date of the invoice. Should the Licensed Organisation comprise a number of persons, they are jointly and severally liable to pay the Invoice Amount.
- 2.3** Should the Invoice Amount or part of it be unpaid 30 days after the date of the invoice, the Licensed Organisation shall pay on demand by Experteyes interest calculated on daily rests on the unpaid Invoice Amount until its payment at the default interest rate of 10% per annum or the Commonwealth Bank rate for loans in excess of \$100,000 plus 3%, whichever is the higher.
- 2.4** On default by the Licensed Organisation of its obligations under the Supply Agreement, the Licensed Organisation shall pay to Experteyes all costs, expenses or damages (including legal costs, expenses or damages on a full indemnity basis) incurred by Experteyes as a result of the default.

## **3. LICENCE**

- 3.1** Subject to compliance by the Licensed Organisation with the Supply Agreement and clause 3.3, Experteyes grants the Licensed Organisation the non-exclusive licence world-wide (or if the Supply Agreement is for a Project only, then in respect of the Project only) for the Term to:
  - (a)** perform, reproduce or make available online or electronically transmit the Licensed Materials solely for the employees of the Licensed Organisation; but not any other party including any contractor or other party engaged by or associated with the Licensed Organisation;
  - (b)** reproduce the literary and artistic works comprised in the Licensed Materials by printing or photocopying a paper copy for the supply to contractors and other parties engaged by or associated with the Licensed Organisation on its projects, but not for copying or reproduction by such contractors and other parties.
- 3.2** The Licensed Organisation will not use or permit, authorise or encourage the use of the Licensed Materials other than as specified in clause 3.1 and specifically will not provide the Licensed Materials (including Paper Resources supplied by Experteyes to the Licensed Organisation) to any unauthorised parties including, but not limited to, Training and Safety Consulting organisations associated or controlled by it and will use reasonable endeavours to ensure that the Licensed Materials are used only in accordance with clause 3.1.
- 3.3** Should the Supply Agreement restrict the Licensed Materials to Paper Resources, the Licensed Organisation must not reproduce or copy the Paper Resources, permit, authorise or encourage any other parties to reproduce or copy the Paper Resources or dispose of the Paper Resources to any other parties.
- 3.4** No Enhancements are to be undertaken by the Licensed Organisation, which must request Experteyes to make the Enhancements.
- 3.5** The Licensed Organisation acknowledges and agrees that the Intellectual Property Rights in the Licensed Materials are and remain the property of Experteyes.

## **4. OBLIGATIONS OF THE LICENSED ORGANISATION**

- 4.1** During the Term the Licensed Organisation shall promptly advise Experteyes of any litigation or arbitration or threat of litigation or arbitration which may involve the Licensed Materials.
- 4.2** The Licensed Organisation shall not:
  - (a)** hold itself out or engage in any conduct or make any representation which may suggest to any person that the Licensed Organisation is for any purposes the agent of Experteyes;
  - (b)** sell or offer to sell or licence the Licensed Materials to any other party.

## **5. LIMITATION OF LIABILITY**

The Licensed Organisation acknowledges that it shall use the Licensed Materials at its own risk and shall act on the basis of any advice given by Experteyes at its own risk and agrees that any employee or agent of Experteyes providing advice on behalf of Experteyes shall not be liable for any loss, damage or injury occasioned to the Licensed Organisation arising from or caused by the provision of the Licensed Materials, advice or support under the Supply Agreement or the use made of them by the Licensed Organisation or from any other reason whatsoever.

## **6. TERMINATION**

**6.1** Experteyes may terminate the Supply Agreement upon the happening of any of the following events:

- (a)** if the Licensed Organisation is wound up, resolved to be wound up, or has a provisional liquidator appointed to it;
- (b)** if a receiver or manager or receiver and manager of any assets of the Licensed Organisation is appointed;
- (c)** if the Licensed Organisation enters into any scheme of arrangement or other composition with its creditors;
- (d)** if an official manager of the Licensed Organisation is appointed under the Corporations Law;
- (e)** if the Licensed Organisation is deemed to be insolvent under the Corporations Law; or
- (f)** if the Licensed Organisation fails to comply with or observe any of the provisions of the Supply Agreement and where that failure is capable of remedy the Licensed Organisation fails to remedy such failure within 28 days of notice specifying the failure and requiring it to be remedied.

## **7. CONSEQUENCES OF TERMINATION**

**7.1** In the event of termination for any reason all rights of the Licensed Organisation granted under the Supply Agreement shall terminate and the Licensed Organisation will forthwith cease to perform, print, reproduce, make available online or electronically transmit or use in any manner whatsoever the Licensed Materials and shall destroy all print copies of the Licensed Materials in the possession, custody or control of the Licensed Organisation.

## **8. GST**

**8.1** All amounts, which the Licensed Organisation is required to pay to Experteyes under this agreement, are exclusive of GST.

**8.2** If Experteyes is required to pay GST on any amount payable by the Licensed Organisation under this agreement, the Licensed Organisation must pay an additional amount equal to the GST amount.

**8.3** This additional amount will be payable on the due date for payment of the amount on which the GST is payable or the date on which Experteyes delivers a tax invoice to the Licensed Organisation whichever is the later.

## **9. GENERAL**

### **9.1 No Assignment**

The Licensed Organisation shall not assign all or any of its rights under the Supply Agreement without the prior written consent of Experteyes.

### **9.2 Severability**

If any provision in the Supply Agreement is invalid or unenforceable the Supply Agreement will remain otherwise in full force apart from such provision, which will be deemed deleted.

### **9.3 Waiver**

The failure of a party to the Supply Agreement to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

Accepted for and on behalf of the Licensed Organisation

Name:

Date:

Accepted for and on behalf of Experteyes

Name:

Date: