

GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

TRAINING, ASSESSMENT & CERTIFICATION, CONSULTANCY SERVICES AND MINOR WORKS

1. DEFINITIONS

Services Includes the provision of training, assessment and certification materials, any incidental or consultancy services performed, minor works or the provision of goods.

Site/Premises The location where the Services are performed.

Students The Client's employees or anyone else participating in the training under the direction or responsibility of the Client.

2. GENERAL

2.1 These terms and conditions may only be varied with EnerSafe's written authorisation. In the event of conflict between these terms and conditions and any other document or statement forming part of the Contract, these terms and conditions shall prevail. In the event that this clause does not resolve any inconsistency, EnerSafe shall reasonably direct the Client as to the resolution of the inconsistency.

2.2 The Contract together with all documents incorporated therein by reference including any relevant Booking Form or Letter of Offer shall constitute the entire terms of the Contract and supersedes all previous correspondence and communications.

2.3 In the absence of written acceptance by the Client, the commencement of any work under this Contract shall be deemed an acceptance hereof and a contract shall be formed upon the terms and conditions set forth in this Contract.

2.4 Any provision of this Contract which contravenes any law of New South Wales or of the Commonwealth of Australia or is or becomes at any time unlawful or unenforceable, shall to the extent to which it contravenes or is unlawful or unenforceable under those laws, be deemed to be excised from and not form part of this Contract without affecting validity or enforceability of the remaining provisions and Parties shall forthwith negotiate a satisfactory substitute.

2.5 The Contract shall be governed by the laws of the State or Territory in which the work is carried out.

2.6 The Client must comply with the requirements of any Laws, regulations, orders, codes, standards and ordinances of relevant government authorities or

statutory bodies applicable to the Services and the Contract.

2.7 Where a notice or instruction has to be given under this Contract, it may be given by hand, facsimile transmission, e-mail or sent by post to the address set out in the Contract or a substitute address that has been notified to the other party.

3. ENGAGEMENT

3.1 The Term of this Contract is for a period of 2 years only, provided clauses 10 to 13 (inclusive) and 19 continue beyond the expiry of the Term.

3.2 The Booking Form or Letter of Offer sets out the proposed fees to be invoiced and further details the Services to be provided by EnerSafe and shall remain valid for a period of 30 calendar days from the date of Booking Form Letter of Offer.

3.3 The Booking Form or Letter of Offer will become binding on receipt of a valid Purchase Order or other agreed method of acceptance.

4. PAYMENT TERMS

4.1 All charges for Services provided under this Contract are due and payable within 30 calendar days from the date of invoicing. EnerSafe may require the Client to pay an amount in advance to cover expected expenses and fees.

4.2 Any payment outstanding for more than 30 days from the date of invoice will constitute a breach of Contract and EnerSafe may terminate the Contract.

4.3 Where a breach occurs pursuant to 4.2 above the client will become liable to pay to EnerSafe interest on all amounts outstanding hereunder at a rate of 10% per annum calculated monthly.

4.4 In this Contract, "GST", "tax invoice" and "adjustment note" have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*. All payments made or to be made for Services provided by EnerSafe under this Contract are expressed as being exclusive of GST.

If GST is applicable to any supply made under this Contract, EnerSafe is entitled to charge GST for that supply.

5. CLIENT RESPONSIBILITIES

The Client agrees:

- That Services provided by Enersafe are accurate and fit for the purposes stated in this Contract on the date those Services are provided to the Client;
- It is the Client's responsibility to update materials after the date they are received to ensure that the materials remain fit for purpose, including in respect of legislative and regulatory changes;
- That EnerSafe by its servants or agents have prompt and adequate access to the Facilities, Plant, Material and Equipment as required;
- That all materials to be supplied by the Client will be of high standard and suitable for the intended use;
- To provide a suitable and safe environment for the performance of the Services; and
- To indemnify Enersafe against all claims, loss, damage or liability in connection with the Client's amendments or modifications to materials provided by Enersafe. Enersafe is not required to suffer a loss to claim indemnity under this clause.

For the avoidance of doubt, a reference to Services in this clause includes training and other materials provided by Enersafe to the Client.

6. ENERSAFE'S RESPONSIBILITIES

EnerSafe shall provide the Services in accordance with the provisions of this Contract and will carry out its responsibilities pursuant to the Contract with the requisite care and diligence.

EnerSafe will obtain and or require the client to obtain all licenses, qualifications, permits, certificates, accreditations and authorities necessary for the performance of the Services.

7. INSURANCES

EnerSafe shall arrange appropriate policies of insurance in relation to the Services and provide to the Client evidence of Certificates of Currency.

The Client must have in place:

- Workers' compensation and employer's liability insurance for all of the Client's employees or anyone else treated as or fulfilling the position of an employee of the Client under the appropriate legislation;
- Public liability insurance in respect of personal injury, death or property damage arising out of the Services;

EnerSafe and the Client must keep their insurances in force for the duration of the Services.

8. QUALITY ASSURANCE AND ENVIRONMENTAL MANAGEMENT

8.1 EnerSafe will meet its Quality obligations as determined by the National Vocational Education and Training Regulator Act 2011

8.2 Where Nationally Recognised Competencies are being assessed, EnerSafe will provide training services that will meet the standards required by the Australian Qualifications Framework.

8.3 Upon successful completion of a course, Certificates / Statements of Attainment (for nationally accredited courses) will be issued, Statement of Attendance will be issued for non-accredited courses and a Transcript will be issued for Refresher courses.

8.4 Where applicable, the Client and Students are required to provide feedback to ensure any quality objectives and data collection requirements are met.

8.5 It is the Client's responsibility to ensure Students attend training and assessment.

8.6 The Client accepts that EnerSafe's decision on whether Students achieve certification at completion of the Services is final.

8.7 The Client must:

(a) avoid pollution of the environment and act in accordance with the relevant Environmental Authority Site Licence and other Authorities' requirements;

(b) assist EnerSafe to comply with the Global Minimum Requirements (GMRs) in regard to quality and environmental management and adhere to EnerSafe's procedures when providing the Services;

8.8 The Client is responsible for and must make good any damage to the environment or otherwise caused during the provision of the Services on the Clients premises or elsewhere.

9. HEALTH AND SAFETY

9.1 The Client must:

(a) assist EnerSafe to comply with the Global Minimum Requirements (GMRs) in regard to health and safety and adhere to EnerSafe's procedures when providing the Services;

(b) provide adequate and competent supervision;

(c) ensure the safe working conditions for all persons affected by the provision of the Services;

(d) provide evidence of a safe system of work, including Health and Safety Management structures which are required by EnerSafe which without limiting, may include, safe work method statements, safe work instructions, risk registers and plant and equipment registers at a minimum of 14 days prior to commencement of Services at site / premises;

(e) when working at EnerSafe's site/premises, at all times comply with EnerSafe's procedures, workplace health and safety policies and

procedures, safety and health management system and plans and be involved in all Risk Assessments of the site/s;

- (f) immediately notify EnerSafe of each injury, near miss or risk of injury or environment hazard which occurs in the course of providing the Services;
- (g) comply with any relevant incident investigation relating to an incident resulting from/during the provision of Services and its findings and recommendations;
- (h) ensure that they maintain all relevant workers compensation insurances and have in place a return to work policy or be willing to comply with the EnerSafe's return to work program (where applicable);
- (i) ensure that tools, plant and equipment provided or utilised in the provision of Services by the client or any of the clients suppliers, agents or contractors, are inspected and determined as being fit for purpose, maintained in condition consistent with manufacturers specifications and free from defects, EnerSafe must be provided with instructions for use and a certification as to safety. Registers of Plant, Tools and Equipment are required, noting any servicing due or completed and tagging undertaken along with Risk Registers or Safe Work Instructions when requested;
- (j) participate in site/premises consultative arrangements (including toolbox meetings) at its own cost, where requested by EnerSafe;
- (k) remove any person from the site/premises if in the opinion of EnerSafe the person is guilty of misconduct or is incompetent or negligent, or has contravened any applicable rules of EnerSafe or an Authority on safety or safe working procedures.

9.2 The Client shall indemnify EnerSafe for any loss or damage suffered by EnerSafe as a result of breach of this Clause.

9.3 Any material failure to so comply with this clause shall constitute grounds of default.

10. CONFIDENTIAL INFORMATION

The Parties shall keep all aspects of this Contract and all matters arising from the Services confidential and shall not disclose these details to any third party except to the extent required by law or any statutory authority.

11. INTELLECTUAL PROPERTY

11.1 All Intellectual Property which EnerSafe creates or develops for the purpose of undertaking the work under the Contract shall remain the property of Enersafe and, the ownership of such intellectual property shall not vest or be transferred to the Client.

11.2 Enersafe retains all rights, copyright and Intellectual Property in the training and reference materials it provides to the Client and the Clients employees,

agents and consultants, in the course of providing the Services. Training and reference materials cannot be used by the Client without Enersafe's written consent.

11.3 The Client shall indemnify EnerSafe for any loss or damage suffered by EnerSafe as a result of breach of this Clause.

12. INDEMNITY

12.1 Each party (the "Indemnifying Party") indemnifies the other party and their respective Associates ("the Indemnified Parties") against all claims, losses, damages and expenses arising out of any act or omission of the Indemnifying Party or any of its Associates in connection with this Contract, in respect of any:

- (a) personal injury (including death or disease) to any employee or agent of the Indemnified Parties;
- (b) loss of or damage to any property (including but not limited to tools and equipment) owned or supplied under the Contract by the Indemnified Parties;
- (c) loss of or damage to any property owned by the Indemnified Parties, but excluding the work under the Contract;
- (d) loss of or damage to the Works and any other work under the Contract;
- (e) personal injury (including death or disease) to or loss of or damage to the property of any third party;
- (f) actual or alleged infringement of any Intellectual Property Right;
- (g) breach or non-compliance with a Law or any other lawful requirement of an Authority by the Indemnifying Party or any of its Associates;
- (h) liability arising from a breach of the Contract by the Indemnifying Party,

But, any such indemnity or liability shall be proportionally reduced to the extent that the Indemnified Parties (or any one or more of them) caused or contributed to the claims, losses, damages or expenses being the subject matter of the claim or indemnity.

12.2 The Indemnified Party may recover from the Indemnifying Party as a debt due and owing to the Indemnified Party, any costs, losses, expenses or damages the subject of the indemnities under this Clause.

12.3 The provisions of this clause will survive any termination or expiration of the Contract.

13. LIMITATION OF LIABILITY

Subject to any prevailing legislation, but notwithstanding any other provision of the Contract whether express or implied:

- (a) neither EnerSafe or the Client shall have any liability whether in contract or tort (including negligence), breach of statutory duty or otherwise to the other party or parties for any loss of profit, loss of revenue, loss of business, or loss of use, or for any indirect, special, economic or consequential loss or damage;
- (b) EnerSafe's total liability whether in contract, tort (including negligence), breach of statutory duty or otherwise to the Client shall not exceed an amount equivalent to:
 - i. where the event giving rise to the liability results in circumstances in which payment by way of indemnification is made in relation to a claim or claims made pursuant to any insurance policy required to be effected under the Contract - the extent of such indemnification; or
 - ii. in any other case, the contract value as stated on the Booking Form or Letter of Offer.

The provisions of this clause will survive any termination or expiration of the Contract.

14. TIME FOR COMPLETION

EnerSafe shall use its best endeavors to proceed with the Services with due expedition and without delay, and will strive to meet the timeframes stipulated in the Booking Form or Letter of Offer. EnerSafe shall have no liability to compensate the Client in respect of any prolongation or delay claim unless otherwise agreed.

15. DELAY COSTS

- Should EnerSafe be delayed in or prevented from carrying out its obligations under the Contract whether in whole or in part by reasons outside its control then EnerSafe has the right to claim its reasonable costs as a result of the delay which may include but not be limited to the per day amount stated in the Booking Form or Letter of Offer.
- Such causes of delay include but are not limited to:
 - (a) fires, floods and explosions;
 - (b) inclement weather
 - (c) acts of God;
 - (d) force majeure
 - (e) act or omission of the Client
 - (f) any other cause beyond the control of EnerSafe
- EnerSafe shall submit, if requested by the Client, evidence where applicable of the loss incurred as a result of the delay event.

16. VARIATION

If EnerSafe is required to perform the Services in circumstances other than those normally pertaining to such work, or if there is a change in the scope, timing, nature or extent of the work, this will constitute a variation.

An amendment or variation to this Contract is not effective unless it is in writing and signed by the Parties.

The price for a variation shall be agreed wherever possible prior to the execution of the variation or shall be a reasonable price determined by EnerSafe and then added to or deducted from the Contract Price.

17. TERMINATION

17.1 EnerSafe may terminate the Contract without notice to the Client if the Client:

- (a) is in breach of a term of these terms and conditions and fails to remedy the breach within 5 days of notice in writing by EnerSafe specifying the breach and requesting the Client to remedy it;
- (b) becomes insolvent or initiates or enters into any scheme, arrangement or composition with its creditors, whether informally or pursuant to the Bankruptcy Act 1966 (Cth) or the Corporations Act 2001 (Cth); or is subject to the appointment of an official manager or a receiver; or initiates voluntary liquidation or has a statutory demand pursuant to the Corporations Act or an application to wind up served upon it; or execution under a judgment debt is levied against it.

17.2 If termination occurs pursuant to this Clause the Client will be liable to pay to EnerSafe an amount equal to the value of the work and costs incurred prior to cancellation/termination.

17.3 Termination of the Contract pursuant to these provisions shall be without prejudice to any of the rights, remedies and claims of EnerSafe.

18. CANCELLATION AND REFUND

Notice of intended cancellation must be made in writing to enersafe@lendlease.com prior to the date of scheduled training. Should notice not be received, the student/s will be marked as absent and full fees applicable.

In the event of cancellation by the Learner or a party on the Learners behalf, the following penalties will apply:

- Cancellation within 3 weeks of course: 25% of training fee is withheld
- Cancellation within 2 weeks of course: 50% of training fee is withheld
- Cancellation within 1 week of course: 75% of training fee is withheld
- Cancellation within 2 days of course: No refund

Should EnerSafe be required to cancel or make changes to a training program, students will be offered either of the following:

- An alternative date and/or location
- Full re-imbursement of fees paid minus a \$50 administration fee

19. DISPUTE RESOLUTION

If a dispute arises in relation to this Contract either party may at any time give written notice to the other requesting that a settlement meeting take place. Nominated representatives of both parties must meet within seven (7) calendar days of the notice and endeavor to resolve the dispute in good faith.

If a settlement meeting does not take place or, after seven (7) calendar days of the settlement meeting the

dispute remains unresolved, the dissatisfied party is free to commence litigation in respect of the dispute.