



ANSTO Terms of Business

Definitions

In this Agreement:

"**Agreement**" includes the Particulars and these Terms of Business.

"**ANSTO**" means Australian Nuclear Science and Technology Organisation, its successors and assigns.

"**Client**" means the person or company named in the Agreement, of which these Terms form part, its successors and permitted assigns.

"**Particulars**" means the accompanying documentation setting out details pertaining to particular Services to be provided by ANSTO to the Client.

"**Product**" means the tangible product or result (if any) delivered as part of the Services.

"**Reimbursable**" means the materials and services of third parties provided in connection with the Services nominated as a reimbursable in the Particulars.

"**Services**" means the services to be provided by ANSTO to the Client, a description of which is set out in the Particulars.

Fees

- 2.1 This clause applies only if ANSTO has estimated (not fixed) in the Particulars the fees to be charged to the Client for the Services. Any estimated fees have been calculated on the basis (if any) set out in the Particulars. ANSTO's actual fees may differ from this estimate. Any difference will be calculated on the basis (if any) set out in the Particulars. ANSTO will advise the Client promptly if its actual fees are likely to exceed the fee estimate.
- 2.2 Reimbursables (plus a margin of 10%) will, at the option of ANSTO, be billed directly to the Client or charged to ANSTO and on-charged to the Client. Reimbursables are not included in the fee estimate.
- 2.3 The Client agrees to pay any tax or duty, including without limitation any consumption tax, value added tax, goods and services tax, stamp duty or customs duty, or similar taxes or duties levied on ANSTO in respect of the Services, the Product or the Reimbursables.
- 2.4 Unless a contrary method of payment is set out in the Particulars, ANSTO's fees will be payable within thirty (30) days of the date of invoice. Usually ANSTO will render invoices monthly.
- 2.5 Outstanding fees will attract interest at a rate equal to 2% over Commonwealth Bank of Australia's prime lending rate from time to time charged to commercial borrowers who borrow more than \$100,000, accruing daily, from their due date to their receipt in full, without need for further invoice.

ANSTO warranties and undertakings

- 3.1 Except as restricted by statute, all express or implied conditions, warranties, undertakings and representations, arising by statute, general law or otherwise, as to the Services or the Product are excluded.
- 3.2 ANSTO will use its reasonable endeavours to maintain the confidentiality of confidential information the Client may disclose to ANSTO which is identified as confidential. This obligation does not extend to information already known to ANSTO, information lawfully received from third parties or determined by ANSTO from its own endeavours, information in the public domain or information which ANSTO is compelled to disclose.

Client warranties and undertakings

- 4.1 The Client acknowledges that it relies upon its independent assessment and enquiries as to:
 - a. whether the Product and/or the provision of the Services is of commercial value to the Client and suitable for the Client's purposes;
 - b. whether the Product may be owned, held, or used or disposed of by the Client; and
 - c. whether the disclosure of any information in connection with the Product and/or the provision of the Services breaches any obligation or infringes any intellectual property rights of third parties.
- 4.2 The Client warrants that it is entitled to provide all information and other materials provided to ANSTO, and that the use by ANSTO of such information and materials for the purpose of this Agreement does not breach any obligation or undertaking to, or any intellectual property rights of, any third party. The Client indemnifies ANSTO against any loss suffered by, and any claims brought against, ANSTO in connection therewith.
- 4.3 The Client undertakes to obtain all necessary licences or permits, and comply with all legislation, delegated legislation and directives of any competent authority or body to enable it to own, hold, use and dispose of the Product. The Client undertakes to provide evidence of such licences, permits and compliance on request by ANSTO.
- 4.4 The Client agrees to promptly furnish to ANSTO, and so to not delay the delivery of the Services, all information, drawings, data, descriptions, forecasts and the like reasonably required by ANSTO.
- 4.5 The Client agrees that ANSTO and other persons engaged by ANSTO may, where reasonably necessary, access the Client's premises for the provision of the Services, after reasonable notice and with the Client's consent, such consent not to be unreasonably withheld.

5. Intellectual property in Product and as to Services

As between ANSTO and the Client, ANSTO owns all intellectual property in the Product and in all inventions, discoveries and methods and analyses made or employed in the provision of the Services. To the extent that it may do so, ANSTO grants to the Client a non-exclusive licence to use the Product and such intellectual property only in its own business. The Client may not grant any sub-licence, deal with, nor encumber, its rights under this licence, without the written consent of ANSTO.

6. Title and Risk

- 6.1 ANSTO retains property in and ownership of any Product supplied to the Client as part of the Services until the whole amount payable to ANSTO for all Products and Services supplied and for anything else due to ANSTO by the Client has been paid in full, and subject to clause 5, title and ownership then pass to the Client. Until title and ownership passes to the Client, the Client holds the Products on ANSTO's behalf. The Client must return the Products to ANSTO if ANSTO asks the Client to.
- 6.2 Risk of damage to, or destruction or loss of the Products or a change in their physical or chemical properties passes to the Client from the first to occur of the passing of title and ownership to the Client or when the Products are taken into the possession of a delivery vehicle at ANSTO's premises.

7. Dispute resolution

If a dispute arises in connection with this Agreement, the parties agree upon the following process of mediation before commencing arbitration or litigation. The party raising the dispute will notify the other of the dispute. Within 7 days of receipt of a notice, the parties will agree on a mediator. Failing agreement, the parties agree to jointly approach Australian Commercial Dispute Centre Limited ("ACDC") for a recommendation of three appropriate mediators. The parties agree to consider any such recommendation in good faith and within 7 days of receipt of the recommendation notify ACDC of their agreed mediator. If the parties fail to agree on a mediator within 7 days, the parties are free to pursue their own legal rights. Any mediation facilitated by ACDC will proceed at Sydney in accordance with ACDC's then current guidelines for mediation of commercial disputes. Any mediation (whether facilitated by ACDC or not) will be conducted by the mediator at a time agreed upon by the parties. The party initially issuing the notice of dispute may make the opening statement to the mediator. The mediator may then separately confer with each of the parties until such time as the mediator considers it appropriate that the parties again meet to discuss the matters in dispute. The parties agree to use all reasonable endeavours and to act in good faith to resolve the dispute by mediation. If the dispute is not resolved within 28 days of reference to the mediator, the parties are free to pursue other available remedies.

8. Limitation on ANSTO's liability

- 8.1 ANSTO's liability in connection with this Agreement, the Product and the provision of the Services is limited:
 - a. in the case of the breach of any condition or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* (Cth) where the Client is a consumer, to the cost of supplying the Services again or supplying the Services again, at ANSTO's election; and
 - b. in any other case, to the fees paid by the Client to ANSTO.
- 8.2 Except as required by statute, ANSTO shall not be liable for any indirect, economic or consequential loss, including without limitation loss of profit, goodwill, liability to any third party, third party financial loss or lost opportunity.

9. Exclusion of Vienna Sales Convention

The provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) and all associated enacting legislative instruments shall not apply to this Agreement.

10. General

- 10.1 This Agreement may be terminated by either party on 21 days' written notice. If the Client terminates this Agreement where ANSTO is not in breach of this Agreement, then the Client agrees to pay to ANSTO, without set-off or counter claim, and within 14 days of ANSTO's delivery of an invoice for payment for, ANSTO's internal and third party costs to the date on which ANSTO receives notice of termination and ANSTO's lost profits.
- 10.2 This clause 10 and clause 4.2 survive the termination or expiry of this Agreement.
- 10.3 This Agreement constitutes the entire agreement of the parties. A variation of any term of this Agreement must be in writing signed by the parties. A waiver of any breach of this Agreement must be in writing and signed by the party granting the waiver. All notices under the Agreement must be in writing.
- 10.4 This Agreement shall be governed by the laws of the State of New South Wales. Each party irrevocably submits to the jurisdiction of the Courts of New South Wales, and Courts of appeal therefrom, and waives all objections to the venue of any such action or proceedings or any claim that any such action or proceedings has been brought in an inconvenient forum.
- 10.5 If any part of this Agreement shall be void, voidable or unenforceable, it is to be severed from this Agreement, without affecting the validity or enforceability of the remainder of it.
- 10.6 This Agreement may be executed in counterpart. A facsimile copy of this Agreement, any counterpart of it or of the execution of it shall be deemed to be as effectual as if the original Agreement, or any counterpart of it, were originally executed.
- 10.7 The Client's rights under this Agreement may not be assigned except with the prior written consent of ANSTO.