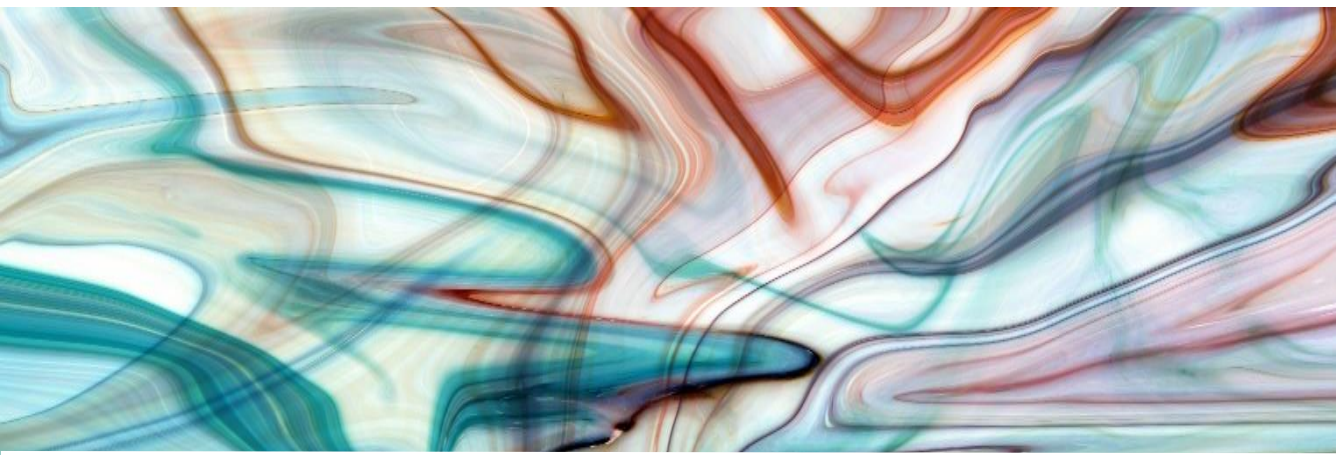




GENERAL CONDITIONS OF SERVICE



Revision: 5
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PART A – CONDITIONS APPLICABLE TO ALL CONTRACTS FOR SERVICES

Note: This PART A comprises Clauses 1 to 22(d) inclusive.

1. Application

- 1.1 A tender by HARRADYNAMICS Pty Ltd (“HARRADYNAMICS”) with these Conditions of Service (“these Conditions”) shall be subject to these Conditions. Any contract (“contract”) between HARRADYNAMICS and a party (“Purchaser”) upon these Conditions shall be governed by these Conditions and by any other terms and conditions agreed in writing between Purchaser and HARRADYNAMICS.
- 1.2 HARRADYNAMICS may vary or withdraw its tender at any time prior to acceptance. Subject hereto, unless otherwise stated by HARRADYNAMICS, the tender shall remain valid for 30 calendar days from the date thereof.
- 1.3 Any tender which quotes a budget, preliminary or estimate price is subject to variation in any respect and shall not be considered an offer capable of acceptance until confirmed in writing by HARRADYNAMICS. Any preliminary specifications, illustrations, drawings, data, dimensions and weights submitted by HARRADYNAMICS with a tender are illustrative and approximate only and do not form part of the contract unless expressly confirmed and incorporated herein.
- 1.4 In these Conditions “tender” means a tender, submission, proposal, offer (including counter-offer) or quotation in connection with the services the subject of the contract.

2. Scope of Services

- 2.1 Services shall be supplied in accordance with these Conditions and the scope of services set out in the contract, and the Purchaser is responsible for satisfying itself as to the suitability of such services for the Purchaser’s application. In these Conditions “services” means the services under the contract and “goods” means any goods under the contract (as the case may be).
- 2.2 HARRADYNAMICS shall not be bound by any representation concerning the scope of supply, performance or characteristics of services unless expressly incorporated in the contract.

3. HARRADYNAMICS’s General Obligations

- 3.1 HARRADYNAMICS shall supply the services in accordance with the requirements of the contract and by the time(s) required by the contract and as such time(s) may be extended from time to time if provided for in the contract. HARRADYNAMICS will ensure that the services conform to the scope of work set out in the contract, as well as any applicable standards and codes agreed to herein.

4. Purchaser’s General Obligations

- 4.1 The Purchaser shall pay HARRADYNAMICS the price for services (and goods, if any), as the same may be adjusted from time to time as provided for in the contract, (the “contract price”), in accordance with the contract.
- 4.2 The Purchaser shall, in a timely manner and so as to avoid any delay to HARRADYNAMICS, provide all information, approvals, permits, authorisations, licences, customs clearances, instructions, materials, civil works, reports, drawings, geotechnical and survey information, access and other things which may be required in relation to the performance of HARRADYNAMICS’s obligations and which is not expressly stated to be

HARRADYNAMICS's responsibility. The Purchaser shall provide to HARRADYNAMICS any approval or comment with respect to drawings or documents submitted by HARRADYNAMICS to The Purchaser within five (5) working days from the date of the submission by HARRADYNAMICS of such drawings unless some other time is provided for in the contract.

- 4.3 If HARRADYNAMICS considers the information, documents and other particulars made available to HARRADYNAMICS by the Purchaser are not sufficient to enable HARRADYNAMICS to provide the services in accordance with the contract and the provision of which is not reasonably to be considered within the responsibility of HARRADYNAMICS under the contract, HARRADYNAMICS may advise the Purchaser who shall then provide such further assistance, information or other particulars as necessary in the circumstances or as requested by HARRADYNAMICS.

5. Price

- 5.1 Except as otherwise provided elsewhere in the contract:

- a) Invoices for services shall be submitted by HARRADYNAMICS on a monthly basis.
- b) Invoices shall be due and payable within fourteen (14) calendar days of the date of invoice.
- c) The prices quoted include the cost of delivery of any goods, as at the date of HARRADYNAMICS's tender.
- d) Any increase in the cost to HARRADYNAMICS for the provision of the services or goods as a result of a variation in exchange rates or change in law between the date of HARRADYNAMICS's tender and the date of delivery shall be borne by the Purchaser and the contract price shall be adjusted accordingly. In these Conditions "change in law" means when any legislation, regulation, by-law, ordinance, standard, award or order comes into effect or is changed, including but not limited to any new tax, duty or other impost or change in the rate of any tax, duty or other impost.

- 5.2 Sales Tax, Goods and Services Tax, or a Value Added Tax, (as the case may be) at the applicable rate shall be added to the quoted prices.

- 5.3 The Purchaser shall pay interest to HARRADYNAMICS on any moneys outstanding on an invoice from the date thirty one (31) days after the date of invoice ("the interest date"), such interest to be calculated from the interest date until such outstanding moneys are received into HARRADYNAMICS's nominated bank account. The interest rate shall be the maximum per annum commercial overdraft rate determined by the Commonwealth Bank of Australia on the interest rate plus 2.5%, accruing daily.

- 5.4 The parties hereby expressly agree that any payment obligations pursuant to the contract which are presently denominated in a national currency of a member state of the European Community or in "ECU" shall be automatically converted to an equivalent obligation in the proposed single currency of such member state. The rate of conversion shall be the irrevocably fixed conversion rate to be adopted by the Council of the European Communities. The contract shall not be amended or terminated as a result of the conversion referred to in the foregoing sentence, and shall remain in full force and effect.

- 5.5 For services to be supplied outside of Australia, the contract price does not include any duty, customs, fess of other impost on the services or on the equipment, property or activities of HARRADYNAMICS, its subcontractors or any of their respective employees in relation to the contract levied outside Australia or any tax on or withholding from any

payment to HARRADYNAMICS or on the contract levied outside Australia and the same shall be for the account of the Purchaser.

6. Warranty and Standard of Performance

- 6.1 HARRADYNAMICS provides a qualified and limited warranty. HARRADYNAMICS shall perform the services with reasonable care and skill, and in accordance with that standard acceptable amongst skilled professionals providing for reward services of a similar kind to the services hereunder. HARRADYNAMICS's obligation in respect of the services and any breach of warranty or duty expressed or implied in connection therewith is solely and exclusively limited to the re-performance of services in which any deficiency or omission becomes apparent and is notified by the Purchaser to HARRADYNAMICS within 30 calendar days of the performance, or non-performance (as the case may be), of the subject services and only then to a limit of 5% of the contract sum.
- 6.2 HARRADYNAMICS warrants that any goods supplied shall, under proper use, be free from defects in materials and workmanship and conform to the specification in the contract. HARRADYNAMICS's obligation under this warranty shall be limited to making good by repair or replacement, at HARRADYNAMICS's option, of any goods in which any defect appears and is notified by Purchaser to HARRADYNAMICS before the expiry of a period not more than 12 months after first putting such goods into use or 12 months after despatch from HARRADYNAMICS's premises, whichever is earlier. HARRADYNAMICS's obligation under this warranty shall not extend to any failure caused by wear and tear, designs, specifications and items which are outside modifications to the goods which have been made with HARRADYNAMICS's approval. HARRADYNAMICS's obligation is subject to HARRADYNAMICS being given prompt notice by Purchaser of the appearance of the defect and a reasonable opportunity to investigate it, and in any case is limited to the initial cost of the goods supplied, or a lesser amount should repairs or replacement costs not equal the initial cost of the goods supplied.
- 6.3 HARRADYNAMICS's liability and the Purchaser's remedies in respect of services and goods and any loss or damage resulting there from are solely and exclusively as stated in this Clause 6, and HARRADYNAMICS shall have no liability for any defect, omission or damage unless notified by the Purchaser to HARRADYNAMICS prior to expiry of the applicable warranty period described above.
- 6.4 The undertakings and obligations of HARRADYNAMICS under this Clause 6 are in place of and exclude, to the fullest extent permitted by law, all other warranties and conditions, whether oral, written, statutory, express or implied. **IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR PURPOSE AND MERCHANTABILITY SHALL NOT APPLY.**
- 6.5 The Trade Practices Act, 1974, implies warranties, terms and conditions in consumer contracts which cannot be excluded or modified except as permitted under that Act. In the event HARRADYNAMICS may be in breach of any such warranty, term or condition as is implied in the contract, the liability of HARRADYNAMICS shall be limited:
- a) In respect of services, at HARRADYNAMICS's option, to the re-performance of the services or the cost of re-performing the services to a limit of 5% of the contract sum.
 - b) In respect of goods, at HARRADYNAMICS's option, to the repair or replacement of the goods or the cost of repairing or replacing the goods to a limit not exceeding the initial cost of the goods supplied.

7. Completion

- 7.1 Any times quoted for performance of the services are approximate only, provided that HARRADYNAMICS shall make all reasonable efforts to supply the services hereunder within the time stated in the contract.
- 7.2 HARRADYNAMICS shall be entitled to a reasonable extension of time for the performance of its obligations hereunder where any of the following causes delay to HARRADYNAMICS:
- a) Variation in the scope of supply under Clause 8.
 - b) Any act, matter or thing which could not have been reasonably foreseen by HARRADYNAMICS.
 - c) Change in the law.
 - d) Any act or omission of the Purchaser or any Contractor, Consultant, representative or agent thereof.
 - e) Force Majeure under Clause 12.
 - f) Delays of municipal, government, or statutory authorities.
- 7.3 The Purchaser shall pay HARRADYNAMICS the reasonable costs incurred by HARRADYNAMICS (including off site and on site overheads) as a result of obstruction and/or delay caused by the matters referred to in Clause 7.2(a), (b), (c), (d) or (f).
- 7.4 In the event the Purchaser fails to make payment when due, HARRADYNAMICS may suspend performance of the contract until such time as payment is made and HARRADYNAMICS shall be entitled to a corresponding extension of time for performance and costs for the period of delayed payment.
- 7.5 If, notwithstanding Clauses 7.1 and 7.2, HARRADYNAMICS incurs liability to the Purchaser by reason of failure to perform its obligations hereunder by the time or times set out in the contract, then such liability shall be limited to the payment of damages not exceeding 0.5% of the contract price for each full week of delay provided always that the liability of HARRADYNAMICS for or in respect of any and all delays shall not in aggregate exceed 5% of the contract price.

8. Variations

- 8.1 Unless otherwise agreed, any variation to the services to be supplied hereunder shall be valued in accordance with HARRADYNAMICS's schedule of rates for labour, other costs, and variations as set out in the Contract.
- 8.2 Where any of the matters referred to in Clause 7.2(b), (c), (d) or (f) reasonably require a change in the services to be supplied or the conditions in which HARRADYNAMICS is to perform its obligations hereunder then HARRADYNAMICS shall be entitled to vary the services in such manner as HARRADYNAMICS reasonably considers necessary and the value of such variation valued in accordance with Clause 8.1 shall be added to or deducted from the contract price as the case may be.

9. Drawings and Specifications

- 9.1 All designs, drawings and other technical information relating to the services, including any software provided by HARRADYNAMICS under the contract ("technical information"), and the intellectual property rights therein shall be and remain the property

of HARRADYNAMICS. Any drawings and documentation for services supplied hereunder shall be standard issued technical literature.

- 9.2 Any descriptive or shipping specifications, illustrations, drawings, data, dimensions and weights contained in HARRADYNAMICS's catalogues, price lists or publicity material or submitted with HARRADYNAMICS's tender are illustrative and approximate only and do not form part of the contract unless certified by HARRADYNAMICS in writing, in which event they shall be subject to generally recognised tolerances.
- 9.3 Technical information shall be kept confidential by the Purchaser, its employees, agents or subcontractors, shall not be copied, modified or disclosed by any of them and shall not be used by them otherwise than for the purposes of the operation and maintenance of the goods. In the event that the Purchaser does not accept HARRADYNAMICS's tender it shall return to HARRADYNAMICS all technical information supplied by HARRADYNAMICS together with any copies made.
- 9.4 HARRADYNAMICS grants to the Purchaser the non-exclusive and non-transferable right to use the technical information, including software, provided by HARRADYNAMICS for the life of the services supplied under the contract for the purposes of their operation and maintenance in the place and manner anticipated at the time of HARRADYNAMICS's tender and for no other purpose.

10. Intellectual Property Rights

- 10.1 HARRADYNAMICS shall indemnify the Purchaser against all damages and costs awarded against the Purchaser for infringement of any intellectual property right granted or registered at the date of contract in the country of destination of the services specified in the contract (or, if none be specified, in Australia) and resulting from the use or sale of the services but this indemnity shall not apply to any infringement which is due to the association or combination of the services with any other article, apparatus or device or to any services or parts thereof made to designs supplied by Purchaser.
- 10.2 This indemnity is conditional on the Purchaser giving HARRADYNAMICS prompt written notice of any claim for infringement and permitting HARRADYNAMICS (at HARRADYNAMICS's expense) to conduct on the Purchaser's behalf and in the name of the Purchaser any litigation or negotiations in respect thereof. The foregoing states HARRADYNAMICS's entire liability for intellectual property right infringement.

11. Limitation of Liability

- 11.1 Notwithstanding any other provision of the contract, except for damages for delay as set out in Clause 7, HARRADYNAMICS shall have no liability to the Purchaser for any loss of use, production, profit, business, contracts, revenues or anticipated savings, any increase in operating costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever whether suffered by the Purchaser or by any third party.
- 11.2 Subject to Clause 11.1, the total liability of HARRADYNAMICS to the Purchaser shall not in any event exceed in the aggregate an amount equal to 5% of the contract price.
- 11.3 For the purpose of this Clause 11, HARRADYNAMICS contracts also on behalf of and as agent for HARRADYNAMICS's employees, subcontractors, servants and agents (and to that extent, the same shall be or deemed to be parties to the Contract) who shall have no greater liability to the Purchaser than HARRADYNAMICS.
- 11.4 In these Conditions "liability" means any liability whatsoever and whether arising out of or in connection with the contract or the performance or non-performance thereof or anything incidental thereto and whether arising directly or by way of indemnity or

otherwise and whether arising under the law of contract, tort (including but not limited to negligence and misrepresentation), statute, restitution for unjust enrichment or otherwise. The term “liable” shall have a corresponding meaning.

- 11.5 The Conditions do not, and no provision of this contract purports to, exclude, restrict or modify or have the effect of excluding, restricting or modifying:
- a) The application in relation to the supply of the goods or the services of any non-excludable provision of the Trade Practices Act 1974;
 - b) The exercise of a right conferred by such provision; or
 - c) Subject to Clause 6, any liability of HARRADYNAMICS for breach of a condition or warranty implied by such provision.
- 1.16 If the Purchaser is not the sole end user and ultimate owner and/or beneficiary of the services or is procuring them for the benefit of any kind of joint venture, then the Purchaser shall ensure by its contract with the end user or ultimate owner or participants in the joint venture that HARRADYNAMICS is given the benefit of the exclusions and limitations of liability in these Conditions by all such users, owners or participants and the Purchaser shall indemnify HARRADYNAMICS against claims of any kind by them to the extent that HARRADYNAMICS would not be liable therefore to the Purchaser under the contract if the claim had been made by the Purchaser.

12. Force Majeure

- 12.1 If performance by a party of any obligation under the contract (other than an obligation of the Purchaser to make payment) is prevented, restricted or delayed by Force Majeure then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of Clause 12.2.
- 12.2 If performance is delayed for more than three (3) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the contract by not less than 30 calendar days’ notice in writing to the other party.
- 12.3 In these Conditions “Force Majeure” means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, exceptionally inclement weather, except where restricted to employees of HARRADYNAMICS, industrial condition, sabotage or commotion, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected.

13. Termination

- 13.1 Without limiting any other rights it may have, a party (the “notifying party”) may give a written notice stating its intention to terminate the contract pursuant to this Clause 13 to the other party (the “defaulting party”) in the event that the defaulting party:
- a) Abandons or repudiates the contract;
 - b) Commits a continuing and substantial breach of the contract;
 - c) Suspends performance of the contract for a significant time, or fails to pay monies due under the contract, without reasonable cause;
 - d) Purports to assign the whole of the contract without the other party’s consent; or

- e) Appears likely to become subject to an Insolvency Event described in Clause 14.
- 13.2 Unless the defaulting party takes all practicable steps available to it to remedy or overcome the event complained of within twenty one (21) calendar days after receipt of such notice, the notifying party may thereafter by notice in writing terminate the contract forthwith.
- 13.3 Termination of the contract pursuant to these provisions shall be without prejudice to the rights of either party accruing up to the date of termination.
- 13.4 If the contract is terminated for any reason whatsoever, then, without prejudice to the rights of either party accruing up to the date of termination, HARRADYNAMICS will be entitled to payment for: goods delivered and services performed to the date of termination; the cost of services reasonably ordered but not delivered (the property in which shall become the Purchaser's upon payment of all monies to HARRADYNAMICS) or of cancelling such orders where possible; costs reasonably incurred by HARRADYNAMICS in expectation of completing the contract. Except where the Purchaser terminates due to a breach of contract or Insolvency Event on the part of HARRADYNAMICS, the Purchaser shall in addition pay or return to HARRADYNAMICS all retention money and security and pay HARRADYNAMICS the cost of demobilising HARRADYNAMICS's site establishment.

14. Bankruptcy

- 14.1 If either party becomes bankrupt or insolvent or make any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in the Conditions as an "Insolvency Event"), the other party may at any time be written notice terminate the contract forthwith.

15. Entire Contract

- 15.1 Except as otherwise expressly provided in this contract, and subject to Clause 11.5, HARRADYNAMICS excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law including Act of Parliament or otherwise) relating to HARRADYNAMICS's tender, the goods or the services or their delivery or supply, being provisions that might otherwise form part of the contract or be collateral to or form party of any agreement that is collateral to the contract.

16. Severance

- 16.1 If any provision or part of any provision of these Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of these Conditions.

17. Waiver

- 17.1 Any waiver by HARRADYNAMICS of strict compliance with these Conditions shall not be deemed a waiver unless it is in writing and signed by an authorised officer of HARRADYNAMICS.

18. Proper Law

- 18.1 The contract shall be governed by the law of the Australian State in which HARRADYNAMICS submitted the tender and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.

19. Assignment and Transfer

- 19.1 Neither HARRADYNAMICS nor the Purchaser shall assign or transfer the whole of the contract or any interest therein or in any monies payable thereunder without the written consent of the other party.
- 19.2 Nothing contained in this Clause 19 shall prevent HARRADYNAMICS from subletting any part of the work under the contract as HARRADYNAMICS deems appropriate.

20. Vienna Convention

- 20.1 The United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna shall not apply to the contract.

21. Dispute Resolution

- 21.1 Any dispute between the Purchaser and HARRADYNAMICS arising out of or in any way connected with the contract or the services the subject of the contract which is not resolved by the Purchaser and HARRADYNAMICS within 14 calendar days of a notice by either party to the other advising that it is a notice pursuant to this Clause 21 and giving particulars of the matters in dispute, may be referred to arbitration by the person agreed between HARRADYNAMICS and the Purchaser or, failing agreement within 30 calendar days after the giving of the notice, to the nominee of the President for the time being of the Institute of Arbitrators Australia, which arbitration shall be conducted in accordance with the Rules of the Conduct of Commercial Arbitrations of the Institute of Arbitrators Australia.

22. Interpretation

- a) Clause headings shall not form part of, and shall not be used in the interpretation of, the Contract.
- b) Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- c) Words importing a gender include every gender.
- d) Delivery acronyms such as FCA, FOB, CIF used in HARRADYNAMICS's tender or the contract shall be interpreted in accordance with INCOTERMS 1990 edition.