



IBMS Standard Terms and Conditions (For Services provided by IBMS)

In these standard terms and conditions for services provided by IBMS (Conditions) we, us and similar expressions, refer to IBMS Pty Ltd (ABN 11 110 730 848) and you, your and similar expressions, refer to you, our customer or proposed customer. These Conditions form part of and are incorporated into the attached proposal letter/tender (Proposal).

1 PROPOSALS

- 1.1 We issue proposals based on information supplied by you. If the information supplied by you is not correct, you acknowledge that you may engage us to provide services that are not suitable for your purpose.
- 1.2 Unless otherwise stated, the Proposal is an offer by us to provide to you the services specified in the Proposal (Services) which you may accept by signing and returning the Proposal to us.
- 1.3 There will be a binding agreement for us to provide the Services to you on the terms and conditions of the Proposal and these Conditions on the first to occur of:
 - (a) us receiving the Proposal signed by you; or
 - (b) us on your request commencing to provide the Services to you.

2 APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions apply to each supply of services by us to you, including the Services, unless otherwise clearly agreed in writing signed by us and you.
- 2.2 If there is any conflict between these Conditions and to the terms in the Proposal, the terms of the Proposal prevail.

3 SERVICES

- 3.1 Broadly, the services we generally provide can be categorised as follows:
 1. Specialised consultancy assignments relating to building efficiency, strategy reviews, solution development and implementation;
 2. Building performance audit and reviews;
 3. Design for Building Management Systems (BMS), Extra Low Voltage (ELV) control systems and fully Integrated Extra Low Voltage Systems (IELVS);
 4. Technical supervision and advisory services for BMS, ELV and IELVS construction and implementation;
 5. Project management for building technology systems and services projects;
 6. Comprehensive commissioning management services for building services;
 7. IELVS implementation with full project delivery responsibility;
 8. IELVS and other ELV system performance monitoring and support services; and
 9. Building performance monitoring and report software solutions.
- 3.2 You may engage us to provide services for one or more of the above. Generally, we will provide you with a proposal in respect of any services and for each phase, which will set out the scope of works and services to be performed in more detail.
- 3.3 In order that we might better serve you, and that we can have a full appreciation of your instructions, you need to fully explain to us the objectives that you have in relation to this matter and the commercial context in which you have requested our services.
- 3.4 Your objectives may change during the course of the matter. You need to advise us in writing if you wish to add to or refine any aspect of these instructions or to discuss or clarify any aspect of the work we are to undertake.
- 3.5 Until termination in accordance with these Conditions we will provide the Services to you for the time period specified in the Proposal or if no time period is specified then on an ongoing basis.
- 3.6 We will not materially alter the scope of the Services without your consent. In some instances, it may be difficult to specify the precise nature of the activities required to perform the Services before the commencement of the work. If we consider during the provision of our services that a material change or addition will be required we will notify you of that change and enter into negotiations with you in good faith concerning any changes to the terms of the scope of the Services and terms of the Proposal.

4 ASSURANCE OF SERVICES

- 4.1 We shall in the performance of the Services exercise the reasonable skill, care and diligence to be expected of a properly qualified and competent person experienced in the provision of the Services.
- 4.2 Where applicable, we employ the methods, procedures, techniques, personnel and sources of information set out in the Proposal but reserve the right to vary these at our discretion. Any significant variations will be undertaken in consultation with you.

5 LIMITATIONS OF OUR SERVICES

- 5.1 The Services and each of the reports, surveys, opinions and other documents produced by us or on our behalf during the supply of the Services to you are subject to the limitations specified in the relevant report, survey, opinion or other document.

6 YOUR OBLIGATIONS

- 6.1 You must provide us with access to the place where we are to perform the Services and with access to all of your relevant plant, equipment, machinery, hardware, software and systems at all times that we reasonably require in order to perform the Services.
- 6.2 You are to promptly provide to us all relevant systems information, plans, specifications and other documentation that we reasonably require in order to perform the Services.
- 6.3 You must promptly respond to all our requests for further information and documentation and ensure your employees, contractors and agents provide us with all reasonable assistance we require and co-operate with us to allow us to perform the Services.
- 6.4 You must advise us of the appropriate person who will be our primary contact with you and ensure that this person is at all times reasonably available to respond to any requests that we may have in relation to the provision of the Services.
- 6.5 You must not unreasonably withhold or delay any approval we require from you in order to perform the Services.
- 6.6 You must use your best endeavours to ensure that all information and documentation you and your employees, contractors and agents provide to us is true, accurate, complete and not misleading.
- 6.7 You acknowledge and agree that:
 - (a) our performance of the Services is dependent on your timely and accurate response to requests we make of you; and
 - (b) in providing the Services we will be relying on the truth and accuracy of information and documentation you and your employees, contractors and agents provide to us and any decisions you make in relation to how we provide the Services.

7 RELIANCE ON RESULTS OF OUR SERVICES

- 7.1 All reports, surveys, opinions and other documents produced by us or on our behalf during the supply of the Services to you are treated by us as being confidential to you and will not be disclosed or passed by us to any third party without your prior consent. The exceptions are where the information or documentation has already been made public by you or have entered the public domain otherwise than through a breach of this condition by us, or the information or documentation is disclosed as a legislative requirement.
- 7.2 The reports, surveys, opinions and other documents referred to in Condition 7.1 are prepared exclusively for you and are not to be provided to or relied upon by any other party without our prior written consent. We are not liable for claims by third parties to whom the contents of those reports, surveys, opinions and other documents are made known, directly or indirectly, by you. You indemnify us against any loss, damage, costs or expenses of whatsoever nature suffered by us or you in respect of a claim made by such a third party.
- 7.3 In some circumstances, we may agree, at your request, to make a report, survey, opinion or other document referred to in Condition 7.1 known to another party. If so, our consent must be given in writing and you must ensure that before the information is disclosed that the party enters into an agreement with us which sets out the basis on which that information is being disclosed on terms satisfactory to us.
- 7.4 Any opinion or advice provided by us during the supply of the Services to you is strictly limited to the matters stated in the relevant opinion or advice and does not apply by implication to other matters.
- 7.5 You must not construe as legal advice any information, report, survey, opinion or other document provided by us or on our behalf during the supply of the Services. If you require legal advice on any matter relating to the Services you should seek that advice from an independent appropriately qualified legal practitioner.

8 INTELLECTUAL PROPERTY

- 8.1 All intellectual property rights and copyright associated with the Services shall remain vested in and the property of IBMS Pty Ltd. A specific license for use may be granted by us. Any such license will be strictly limited to allowing you to use the Services we provide. We will not accept any liability whatsoever for any use of the materials to which the license is granted for any purpose other than the original intent.

9 FEES AND EXPENSES

- 9.1 In consideration of the performance of the Services you shall pay our fees as stated in the Proposal without any deduction. If you require us to provide additional services outside the scope and nature of the Services, you shall make a fair and reasonable additional payment in consideration thereof. Such payment shall, where appropriate, be calculated by reference to the rates and sums set out in the Proposal. Those fees are based on the assumption that these terms and conditions apply.
- 9.2 You must reimburse us for all expenses incurred by us in the performance of the Services for you, including travelling time, travel, accommodation and living expenses of our personnel when away from their normal place of work, secretarial expenses, printing and reproduction costs, couriers and postage, professional and technical sub-contractors, graphic design, typesetting and artwork expenses, and expendable materials and supplies purchased specifically for the provision of our Services. A handling and administration fee of 10% will be applied to these expenses.
- 9.3 Unless otherwise expressly stated in the Proposal, all fees are in Australian dollars and do not include any sales tax, goods and services tax, stamp duty and other excises and duties that may be imposed in relation to an agreement containing these Conditions or the supply of the Services. Each of them is payable by you in addition to our fees and if paid by us must be reimbursed on demand.

10 PAYMENTS

- 10.1 Invoices may be issued to you by post, fax or email. We will issue invoices on a monthly basis at the end of each month, or earlier if the Services have been completed, for the Services we provide to you during that month.
- 10.2 Invoices shall be payable strictly within 30 days from the date of the invoice.
- 10.3 If any amount you owe us is not paid by the due date then:
 - (a) all money that you owe us on any account becomes immediately payable despite any previously agreed credit conditions;
 - (b) we may suspend supply or cancel the performance of the Services and any other services we have agreed to provide to you;
 - (c) we may charge you interest on any amount from the due date until payment, calculated daily, at 10% per annum;
 - (d) if we charge interest under this clause, we will credit any part payment first against any interest accumulated; and
 - (e) you agree you are liable for all our costs, losses and expenses relating to recovering overdue payments from you, including mercantile agents' and lawyers' fees and expenses on a full indemnity basis.

11 TERMINATION

- 11.1 You or we may terminate an agreement containing these Conditions immediately by a written notice if the other party breaches these Conditions and (if the breach is capable of remedy) fails to remedy it within 28 days after receipt of a written notice to do so. The notice must give particulars of the breach. A breach is considered capable of remedy if it can be remedied in all respects other than as to the original time of performance.
- 11.2 You are deemed to breach these conditions (in addition to any other way you might do so) if:
 - (a) you become or threaten to become or are in jeopardy of becoming subject to bankruptcy or any form of insolvency administration;
 - (b) you cease to carry on business; or
 - (c) you are in default under another agreement with us.
- 11.3 No waiver by either you or us of a provision or breach of an agreement containing these Conditions operates as a waiver of any other provision or breach unless in writing and signed by the party against whom it is sought to be enforced.
- 11.4 Termination does not affect any accrued rights or liabilities of either party nor does it affect any provision which is expressly or by implication intended to operate after termination.
- 11.5 If an agreement containing these Conditions is terminated, you must pay us our fees, costs and expenses for the Services we have performed up to the date of termination regardless of the reason for that termination.

12 LIMITATION OF LIABILITY

- 12.1 Terms, conditions and warranties implied by law which cannot be excluded, restricted or modified apply to this agreement to the extent required by that law. We otherwise exclude to the extent permitted by law all other terms, conditions and warranties that might be implied into this agreement. For the purposes of Section 64A of the Competition and Consumer Act 2010 (ACL), the Client acknowledges that the Services are of a kind not ordinarily acquired for personal, domestic use or household consumption.
- 12.2 Subject to Conditions 11.3 and 11.4, to the extent permitted by law our liability for breach of contract, breach of statutory duty, negligence, or other tort is limited to \$1million or to the extent recovered under our Professional Indemnity Insurance whichever is the lesser amount.
- 12.3 You release us from any liability to you for any loss or damage (including loss of or damage to property, personal injury or death, damage to reputation or goodwill, as well as direct and indirect or consequential costs, losses, expenses, lost profits and lost savings) suffered by you arising from or related to our supply or non-supply of the Services and any IBMS supplied goods to you where that loss or damage is caused or contributed to by you or your employees, contractors or agents providing us information or documents which are untrue, inaccurate, incomplete or misleading.

- 12.4 You release us from any liability for, and indemnify us from, any claim made by a third party against us for any loss or damage (including loss or damage caused by the loss of or damage to property, personal injury or death, damage to reputation or goodwill, as well as direct and indirect or consequential costs, losses, expenses, lost profits and lost savings) suffered by a third party arising from or related to our supply of the Services and any IBMS supplied goods to you (including but not limited to an act or omission that constitutes or results in negligence, or other tort, or in a breach or alleged breach of contract or statutory duty).
- 12.5 You do not rely on any representation, warranty or other provision made by us or on our behalf which is not expressly stated in the Proposal.
- 12.6 If as part of providing the Services we supply computer software, computer hardware, communications equipment or other goods or products (IBMS Supplied Goods) manufactured by a third party then, to the extent permitted by the ACL:
- our warranty to you for each item of IBMS Supplied Goods is limited to the manufacturer's warranty or the warranty required by the ACL where the manufacturer's warranty does not comply with the ACL;
 - we will use our reasonable endeavours to ensure that you can rely on the manufacturer's warranty for any IBMS Supplied Goods;
 - you must at first instance make any warranty claim direct to the manufacturer; and
 - our maximum liability to you in relation to an item of IBMS Supplied Goods is limited to a refund of your purchase price for that item.
- 13 INSURANCE**
- 13.1 The amount of Professional Indemnity Insurance held by us for each claim or series of claims arising from the same original cause shall be \$1million unless otherwise stated in the Proposal. The amount of Public Liability Insurance held by us is \$20million unless otherwise stated in the Proposal.
- 13.2 We shall affect the insurance in Condition 13.1 for a period of six years from the completion of the Services, unless otherwise stated in the Proposal, provided that such insurance is available in the market for the Services at commercially reasonable rates and terms.
- 14 DISPUTE RESOLUTION**
- 14.1 A dispute under an agreement containing these Conditions must first be referred to the Managing Director or Chief Executive Officer of each party for resolution. If the Managing Directors or Chief Executive Officers cannot resolve the dispute within 28 days, the dispute must be referred to the Australian Commercial Disputes Centre limited (ACDC) for conciliation in accordance with the Conciliation Rules of ACDC. If the dispute has not been resolved within 28 days after the appointment of the conciliator the dispute must be submitted to mediation administered by ACDC. The mediator must be selected from a panel suggested by ACDC. The parties must ask the Secretary General of ACDC to appoint the mediator if they cannot agree on who it should be. The mediation must be conducted in accordance with the laws of Western Australia. The mediator must not be the conciliator. Conciliation or mediation must be held in Perth, Western Australia, unless otherwise agreed by both parties.
- 15 NOTICES**
- 15.1 Notices must be in writing. A notice may be delivered to a party by hand, by pre-paid ordinary post, by fax or by email to that party's address as last notified to the party giving the notice. A notice will be taken to be duly given and received:
- if delivered by hand, when delivered;
 - if delivered by pre-paid ordinary post, on the third business day after posting;
 - if delivered by fax, on completion of transmission and receipt by the sender of the appropriate transmission report; and
 - if sent by email, as soon as acknowledgement of it enters the recipient's information system.
- 16 MISCELLANEOUS**
- 16.1 Timeframes for the supply of our Services are estimates only and we are not liable for delays in performance of the Services. We are not responsible for delay or failure caused by an event beyond our reasonable control including but not limited to war, labour disputes, terrorist's attacks, equipment failure, unusually inclement weather, storm, flood, earthquake, lightning, fire, action or inaction of government or the late or inadequate supply of goods or services by third parties.
- 16.2 These Conditions can only be varied by one of our authorised officers signing a document which states the variation, and the transaction to which the variation applies.
- 16.3 Any agreement containing these Conditions is deemed to be an agreement made in and governed by the law of Western Australia, and subject to Condition 14, the parties submit their disputes to the non-exclusive jurisdiction of the courts of Western Australia.