



Software Terms and Conditions

Eneer Solutions

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Agreement

This document (“T&C”) sets out the general terms and conditions in which Enee Solutions offers services to customers. This T&C may be accompanied by a schedule of special terms and conditions. This schedule forms part of this T&C; and if there is any conflict or inconsistency between the provisions of the schedule and this T&C, the provisions within the schedule shall take precedence. Acceptance of these terms and conditions by a customer will constitute a binding agreement between that customer and Enee Solutions. A customer accepts these terms and conditions if the customer or its authorised agent, attorney or representative signs and returns this T&C to Enee Solutions. In the absence of an agreed quotation, the customer engages Enee Solutions on a casual (time and materials) basis.

Enee Solutions may offer to supplement the content of this T&C with material in other project documentation. If such an offer is made, Enee Solutions will provide the customer with material which describes the scope of work to be carried out by Enee Solutions and Enee Solutions’ quotation for carrying out such work (collectively “project scope and quotation”). An offer is made when Enee Solutions delivers the project scope and quotation to the customer’s representative. Such material will include instructions on acceptance. If a customer accepts the project scope and quotation, the customer engages Enee Solutions on a project basis. Once accepted, further material may follow, including finalised designs and a project management plan (collectively “supplementary material for project work”). The supplementary material for project work will merely clarify the existing scope of work and method of production. The customer implicitly accepts the terms (if any) contained in such material unless it is able to demonstrate that the material is counter to this T&C or the identified project goals, scope, designs or price as outlined in the project scope and quotation. If so, the customer has 7 days to raise these concerns with Enee Solutions before the supplementary material for project work is deemed accepted.

Acceptance of all supplementary material will constitute a binding amendment to the existing agreement between that customer and Enee Solutions.

This T&C and any other project documentation, once accepted by the customer:

shall be binding on Enee Solutions, the customer; and their successors, trustees, permitted assigns, and administrators; and may be changed from time to time in accordance with the conditions described in “Revision of fees and other changes”.

This T&C, without the section entitled “Engagement on a project basis” (“casual terms”), describes the terms and conditions which apply when Enee Solutions is engaged casually. The casual terms supplemented or amended by the section entitled “Engagement on a project basis”, the project scope and quotation, and any supplementary material for project work

collectively describe the terms and conditions which apply when Enee Solutions is engaged on a project basis.

General obligations

Enee Solutions shall perform its services in a courteous, proper, diligent and professional manner; and will do so in compliance with reasonable customer expectations and all laws, customs and standards applicable to the provision of such services.

The customer shall provide Enee Solutions with all information, ICT system access and other assistance reasonably required by Enee Solutions to perform its services. Enee Solutions shall use all such assistance for the sole purpose of performing services for the customer; and will comply with all reasonable policies notified in writing by the customer to Enee Solutions regarding such use.

Fees and payment terms

Enee Solutions charges \$130 ex-GST per hour for all work completed, unless an alternative charge rate has been quoted and agreed upon by both parties. This includes customer consultation time; work relating to project scoping, planning and management; product design, development, testing, implementation and debugging (if Enee Solutions' warranty does not apply); and travel time and preparation. Enee Solutions itemises its work for a customer. Work is rounded up to the nearest 6-minutes on a per-person, per-job, per day basis. The customer must pay all GST which are applicable to Enee Solutions' fees.

The customer must pay actual or expected disbursements Enee Solutions incurs or expects to incur on the customer's behalf. The customer must pay the applicable or expected GST on such disbursements.

Invoices are usually rendered on a monthly basis, and are to be paid within 14 days of the date of invoice. If the customer disputes the whole or any portion of an invoiced amount by initiating the procedure described in "Dispute resolution", the customer shall pay the portion of the invoiced amount which is not in dispute and shall notify Enee Solutions before the due date of the invoiced amount, the reason(s) for disputing the remainder of the invoiced amount.

Engagement Conditions

Depending on the nature of services required by a customer, Enee Solutions may be engaged on a project basis. This offer is made when Enee Solutions presents the customer with a project scope and quotation.

The project scope and quotation comprises a short-form requirements analysis and a project quotation. The project scope and quotation is usually supplemented by supplementary material for project work throughout the course of the project. A short-form requirement outlines the customer's business needs, high level system requirements and may include some conceptual designs. A project quotation describes the price ("project price") in which Enee Solutions offers to design and develop a solution to the customer's business needs and high level system requirements, as outlined in the short-form requirements, and generally in the form of any included conceptual design or designs. The project price includes the following:

- delivery of a software system design which will be consistent with the customer's business needs and high level system requirements, as outlined in the short-form requirements, and generally in the form of any included conceptual design(s);
- one round of customer feedback and minor remediation work to fine-tune the aforesaid design(s);
- development of software which is consistent with finalised design(s), and which is in accordance with Enee Solutions' development and quality assurance policies;
- the cost of project risks described by the project management plan as being risks which are ascribed to Enee Solutions;
- software implementation, support and any other services explicitly identified in the project quotation; and
- software warranty as described below.

The project price excludes:

- multiple rounds of design remediation for the purposes of addressing or incorporating previously unstated requirements or customer expectations;
- any functional addition or change from the finalised design(s) which constitutes a variation in accordance with Enee Solutions' scope control and variations policy; and
- additional work arising from the involvement of third-parties or any risk which has been assigned to the customer to manage.

Where a project is scheduled to span over a yearly revision of casual rates (refer to "Revision of fees and other changes"), such revisions will not affect the project price unless the customer has unreasonably delayed the project. Where the project has been unreasonably

delayed by the customer, Enee Solutions may adjust the project price up by an amount equal to the increase in the casual hourly rate multiplied by the number of hours of work in the delayed portion of the project. Such amount must not exceed 10% of the project price.

Once a project scope and quotation is accepted, the customer agrees to complete the project with Enee Solutions for the project price. Enee Solutions may allow a degree of flexibility within the project price or negotiate variations as per Enee Solutions' policies on variations and scope control. To be clear, termination of the project will not relieve the customer of its liability to pay Enee Solutions the full project price. The one exception to this is where the finalised designs uncover a project risk which could not have been reasonably foreseen by Enee Solutions or the customer at the time the project scope and quotation was accepted. Such risk must fundamentally alter the viability of the project's completion for the project price. In such cases, either Enee Solutions or the customer may terminate the project within 7 days of the finalised designs being delivered, subject to the customer's payment of all fees earned by Enee Solutions up to that point.

Project timeframes

Enee Solutions will complete all work within a reasonable timeframe, but does not warrant that it will do so within any specific timeframe. As such, all dates provided by Enee Solutions are estimates only and the customer is not entitled to withhold payment of any invoiced amount if Enee Solutions fails to meet any date indicated by it or the customer. The customer should advise Enee Solutions if a project or a certain phase of a project is time critical. Enee Solutions will then use its best endeavours to satisfy the customer's time requirement.

Confidentiality

All confidential information disclosed by either the customer or Enee Solutions must be kept confidential by the other party and must only be used for purposes for which such information was disclosed.

Unless otherwise agreed, Enee Solutions reserves the right to:

- disclose relevant information to its contractors and other customer approved third parties who are involved in the customer's project;
- disclose relevant information to its professional advisers and other suppliers;
- carry out a credit check on the customer and refer any protracted debts to a debt recovery agent and/or credit reporting service;
- publish Enee Solutions' involvement in the customer's project on Enee Solutions' website

or other marketing material, naming the customer and the general nature of work for that customer;

place a link at the bottom of any websites or web applications created, naming Enee Solutions as the technology partner;

demonstrate parts of the customer's project to new or potential customers, such demonstrations shall exclude material which may reasonably be deemed to be commercially sensitive, including the customer's confidential information; and disclose any information required by law.

Intellectual property

Enee Solutions will develop all custom software using a combination of customer IP, background IP, foreground IP and third-party IP.

The customer licenses Enee Solutions to use its customer IP for completing work for the customer.

Foreground IP is assigned by Enee Solutions to the customer if Enee Solutions is paid for the development of that intellectual property. The customer grants Enee Solutions (and at Enee Solutions' option, a nominee) a fee free perpetual licence to use assigned foreground IP in third party projects and to sub-license the foreground IP to such third parties; as long as such use and sub-licensing of the foreground IP does not prejudice any competitive advantage the customer may have over the third party from the customer's use of the foreground IP, at the time software or other work (which incorporates the foreground IP) for the third party is first deployed. The customer hereby declares that it grants this licence to the aforesaid nominee of Enee Solutions by deed poll and that irrespective of any grant of the same to Enee Solutions, the nominee shall have the same aforesaid rights as Enee Solutions in how the foreground IP may be used. Enee Solutions shall use its best endeavours to protect licensed foreground IP, including the aforesaid licence to Enee Solutions' nominee.

As consideration for the customer's license of foreground IP to Enee Solutions and/or its nominee, Enee Solutions grants the customer a fee free perpetual licence of all background IP Enee Solutions brings to the project. The customer may use and modify this background IP, as long as the customer does not allow such background IP or any part thereof to be separated out from the software or other work which incorporates the background IP, or allow it to be used for any purpose other than to improve or customise work which has been carried out by Enee Solutions. The customer shall use its best endeavours to protect licensed background IP.

Third-party IP licensed to Enee Solutions may be used in software or other work for the customer. Unless Enee Solutions indicates otherwise, such third-party IP is sub-licensed by Enee Solutions to the customer on a fee free and perpetual basis, if Enee Solutions is paid for

the development of the software or other work. The customer agrees to adhere to all terms of use of such third-party IP, and may request from Enee Solutions a copy of such terms. Such sub-licensing typically enables the customer to distribute and use software containing third-party IP, but does not allow the customer to use the third-party IP's development tools or update to later versions of the third-party IP. If the customer wishes to use such development tools, or have a third-party do so, the customer may need to purchase development licences for such third-party IP.

Warranties and releases

The consumer warranties under the Australian Consumer Law ("ACL") may apply to some supplies provided by Enee Solutions. Generally, these warranties apply if the amount which has been paid or which is payable for the supply is \$40,000 or less (or some other amount prescribed by the ACL from time to time); or if the supply is of a kind which is ordinarily acquired for personal, domestic or household use or consumption. The customer should seek its own legal advice as to whether such warranties apply to the customer. If the warranties under the ACL do not apply to a supply by Enee Solutions, Enee Solutions provides its own warranty described below in "Enee Solutions' warranty". Irrespective of whether the warranties prescribed by the ACL or the warranty offered by Enee Solutions applies to the customer, the customer agrees:

that Enee Solutions does not have an obligation to carry out bug fixes (or other corrective or improvement work) which fall beyond the scope of warranties under the ACL or Enee Solutions' warranty; and if Enee Solutions carries out such work, Enee Solutions' standard charges will apply; and

to the limitations, conditions and releases described below in "Warranty limitations and conditions" and "Releases".

Warranties under the ACL

If such warranties apply, the Australian Consumer Law requires the following representation be made by Enee Solutions to the customer:

"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

If such warranties apply and the customer makes a valid claim in accordance with the terms below, Enee Solutions will honour its legislated obligations to that customer. For the purposes

of section 64A of the Australian Consumer Law, Enee Solutions, will at its option, limit its obligation to that customer to any one of:

supplying, replacing or repairing the goods, or supplying again the services, in respect of which the breach of warranty occurred; or
refunding the sum of all amounts paid by the customer for the goods or services

If such goods or services have been provided personally or directly by Enee Solutions. For goods and services that are not supplied personally or directly by Enee Solutions, the customer shall rely on the warranties (if any) provided by or which implied warranty obligations may be attributable by statute to the third party supplier.

Enee Solutions' warranty

If the consumer warranties under the Australian Consumer Law do not apply to supplies subscribed by the customer, and subject to any exclusions and risks Enee Solutions brings to the customer's attention in writing, Enee Solutions warrants that commissioned software and other work will comply with Enee Solutions' project documentation and will be reasonably fit for the defined purpose(s) for which they have been commissioned for a period of:

3 months after the final version of the software or of the other work is released to the customer; or

Subject to the following limitations, conditions and exclusions, this warranty is in addition to other rights and remedies the customer may have under law which relates to the supply by Enee Solutions.

Warranty limitations and conditions

All applicable warranties are subject to the following limitations and conditions:

Enee Solutions does not warrant:

- o delivery of a design which fully satisfies the customer's expectations; or
- o the performance of the commissioned software (or other supply) or that information generated from the use of such software (or other supply) will accord with the customer's expectations

If such expectations have not been described in Enee Solutions' project documentation or have otherwise not been agreed upon by Enee Solutions in writing;

the applicable warranties do not operate where the commissioned software (or other supply) fails because of:

- o any modification, installation or other work by the customer or any of its employees or contractors other than Enee Solutions, which has not been authorised by Enee Solutions in writing;
- o the inappropriateness or failure of the equipment on which the commissioned software (or other supply) is installed or of any software or materials not personally or directly supplied by Enee Solutions;
- o events which are beyond the reasonable knowledge or control of Enee Solutions, including corruption of the commissioned software (or other supply) by viruses, spyware, the effects of any third party software, operator error or negligence; or
- o extraneous factors which are beyond the reasonable processing capability of the commissioned software (or other supply);

the customer having fully complied with all of its contractual obligations to Enee Solutions at the time the customer claims a breach of warranty by Enee Solutions;

the customer notifies Enee Solutions in writing within 3 months after the final version of the commissioned software or other work is released to the customer; such notice shall include a sufficient description of the claimed defect.

Releases

The customer releases Enee Solutions from all claims and liabilities:

arising from all other warranties expressed or implied by statute, general law or custom, except any non-excludable warranty;

(if the consumer warranties under the Australian Consumer Law do not apply to the customer) in contract or equity for consequential damages arising out of, or in connection with supplies by Enee Solutions; even if such liability were foreseeable;

for any inability on Enee Solutions' part to make any supply in accordance with any timeframe estimated by Enee Solutions or which is imposed by the customer without Enee Solutions' express and written agreement;

due to any extraordinary risks relating to a project (or other supply) which the customer has not notified Enee Solutions;

which are instigated by a third-party claim or claims; and

which relate to the customer's cost of obtaining legal advice on the application of the above warranties.

Revision of fees and other changes

Enee Solutions may revise its hourly casual rate and other fees on an annual basis. If it does so, Enee Solutions shall publish such revisions on its website on or around the 1st of June. The revised rate and other fees become applicable 30 days after they are published or from the 1st of July, whichever is later.

Enee Solutions continually improves its project management, risk management, design, development, quality and other policies to ensure that work can be delivered on time, on budget and to an appropriate level of quality. From time to time and without prior notice to the customer, Enee Solutions may make and apply such changes to its work for a customer, so long as they do not affect the fundamental terms of its agreement with that customer (such as the scope of work, fees, completion time and warranties).

All other changes to the agreement between Enee Solutions and the customer must be made by mutual agreement and in writing.

Notices

Unless specified otherwise, all notifications referred to in this T&C and other project documentation shall be in writing and shall be delivered by hand, by pre-paid post, by facsimile or by electronic transmission to the other party's main trading premises, postal address, or to the other party's authorised representative. Notice shall be deemed to have been given:

in the case of hand delivery, at the time the notice is delivered;

in the case of pre-paid post, 3 days after despatch; and

in the case of facsimile or electronic transmission, upon transmission if transmission is on a business day in South Australia, or otherwise at the commencement of the first business day in South Australia following transmission; provided that the sender is able to give evidence of transmission when requested by the intended recipient.

Restraint

During the restraint period, the customer shall neither directly nor indirectly, offer employment or work to any person who is employed or contracted by Enee Solutions. Enee Solutions will suffer a pecuniary loss if the customer breaches this restraint (resulting from search and placement fees, training and orientation time, and lost profits), and this loss will be deemed to be equal in amount to \$50,000 regardless of whether the customer continues to retain Enee Solutions' services following the breach. On demand, the customer agrees to immediately indemnify Enee Solutions for this loss.

Dispute resolution

Despite any contrary rule or implication of law, the agreement between Enee Solutions and the customer shall be governed by the laws of South Australia. The parties shall conduct all dispute resolution procedures in South Australia.

In this clause, "Complainant" means the person who starts the procedure described in this clause and "Respondent" means the other party.

The Complainant must notify the Respondent in writing, the nature of the dispute, what outcome the Complainant wants and what action the Complainant thinks will settle the dispute. The parties must then try to agree on how to resolve the dispute. If within 14 days following notification the parties cannot agree on how to resolve the dispute, either party must refer the matter to the Institute of Arbitrators and Mediators Australia for arbitration in accordance with the Commercial Arbitration Act 2011 (SA) ("act"). The decision of the arbitrator will be final and binding on the parties. The arbitrator will decide who is to pay what costs. This clause constitutes an "arbitration agreement" under s7 of the act.

A party may apply to court for urgent injunctive relief. Otherwise, a party will not commence court proceeding in relation to this contract unless the above procedure for dispute resolution has been complied with.

Subject to the exclusions described in "Warranties and releases", each party indemnifies the other against all reasonable costs, losses, expenses, claims or threatened claims (including costs associated with defending such claims) that arise out of the first party's breach of these terms (including any breach by Enee Solutions of an applicable warranty), or out of any wilful or negligent act or omission by that party.

Notwithstanding any other agreed term, Enee Solutions may defer work for the customer when this dispute resolution procedure is in progress.

Unforeseeable events

A party shall not be liable for its inability to perform obligations if its inability to do so is a direct consequence of an act of God, national emergency, war, prohibitive government regulations, labour dispute, act of terrorism or any other cause beyond that party's reasonable control. If such a force majeure event occurs, the party suffering it will notify the other party of the occurrence and expected duration of the event. The party suffering the force majeure event must use all reasonable endeavours to perform its obligations. If a force majeure event renders performance of an agreement between Enee Solutions and the customer impossible for a continuous period of one month, either party may by notice to the other terminate their agreement.

Termination

If Enee Solutions is not engaged on a project basis, the customer may terminate its agreement with Enee Solutions at any time and Enee Solutions may terminate its agreement with the customer if Enee Solutions provides the customer with 30 days' prior notice.

Regardless of whether Enee Solutions is engaged on a casual or project basis, Enee Solutions may terminate its agreement with the customer, immediately and without notice, if the customer: (1) requires a significant change to the agreed scope of work, or the agreed scope of work needs to be changed through no fault of Enee Solutions; (2) suffers; or threatens, resolves, or is in jeopardy of becoming subject to any form of insolvency administration, receivership or bankruptcy proceeding; (3) ceases; or threatens, resolves, or is in jeopardy of winding up or ceasing trade; (4) is a partnership and dissolves; or threatens, resolves, or is in jeopardy of dissolving; (5) dies or (6) is in breach of this contract and such breach is not remedied within 14 days of notification by Enee Solutions claiming the breach, and the aforesaid dispute resolution procedure has been complied with.

In addition to termination in accordance with the above terms, the parties may terminate their agreement in accordance with the terms described under the headings "Engagement on a project basis" and "Force majeure".

Termination does not end or prejudice any accrued rights or remedies, nor does it end terms which impliedly should continue following termination.

Interpretation

- A. “Enee Solutions” means Enee Solutions ABN 52 909 390 466 of 81 Churchill Road, Prospect, SA 5082
- B. “background IP” means all intellectual property created by Enee Solutions as a tool to aid in the production of commissioned projects.
- C. “confidential information” means any financial or other business information pertaining to
Enee Solutions, its suppliers or the customer in any form disclosed to the other party. Such information includes, but is not limited to the identity of clients or suppliers, research and development information, business plans, strategies, internal processes and documents, ideas, concepts and information concerning intellectual property.
- D. “consequential damages” means any indirect, special, consequential, punitive or exemplary damages, expenses, losses or costs including loss of anticipated or actual revenue or profits, loss of or inability to use equipment, a failure to realise anticipated savings, lost data, down time costs or loss of goodwill.
- E. “customer IP” means all intellectual property belonging to a customer.
- F. “foreground IP” means all intellectual property which are created by Enee Solutions for a customer.
- G. “GST” means Goods and Services Tax imposed by A New Tax System (Goods and Services Tax) 1999.
- H. “intellectual property” or “IP” means all intellectual property rights at any time protected, conferred or recognised by any statute or common law in Australia or elsewhere in the world and whether registered or unregistered, including copyright, trademarks, patents, patentable inventions, design rights, knowhow and rights in circuit layouts, software codes, documents, specifications and details of functionality.
- I. “restraint period” means the time when an agreement for the supply of services is in place, between Enee Solutions as the supplier and the customer, and 12 months after the end of that agreement.
- J. “third-party IP” means all intellectual property which are licensed to Enee Solutions for the purposes of producing commissioned products.

Acceptance

I, or I on behalf of the customer as an authorised agent, representative or attorney for the customer, accept the above terms and conditions of trade for supplies by Enee Solutions and declare by deed the customer's covenant to Enee Solutions' nominee as described. If I make this acceptance and declaration on behalf of the customer, I confirm and warrant I am duly authorised by the customer to make this acceptance and declaration. I make this acceptance and declaration on this day, of2012.

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Customer's / Agent's / attorney's / authorised representative's signature

Witness' signature

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Customer's name, address and ABN

Witness' name and address

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Agent's / attorney's / authorised representative's name, address and title (if employed by the customer)