

1. Definitions  
In these Terms:  
"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act;  
"Confidential Information" means any information of any kind or type acquired by a party in the course of or incidental to the performance of its obligations under the Contract concerning the business, transactions, affairs, property, policy, processes or activities of the other party, including without limitation all member lists, designs, diagrams, technical or artistic drawing, proofs or prints, computer software and programs, pricing, accounting techniques, and literary and artistic works and all information not in the public domain;  
"Contract" means any contract for the provision of services by DJH to the Client;  
"consumer" is as defined in the ACL and in determining if the Client is a consumer, the determination is made if Client is a consumer under the Contract;  
"Copyright Works" means any copyright work produced by or on behalf of DJH in the provision of services;  
"Client" means the person, jointly and severally if more than one, acquiring services from DJH;  
"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;  
"DJH" means DJH Safety Consulting Services Pty Ltd (ACN 133 422 616);  
"Intellectual Property" means any copyright, patents, trade marks, names, confidential information, discovery, invention, secret process, business method or procedure of DJH as at the time the parties enter the Contract, and any improvement, variation, enhancement or new discovery made or discovered by DJH in the complying with its obligations under the Contract which is capable of being used or adopted for use in relation to or in connection with the business or activities of the Client;  
"OHSMS" means Occupational Health and Safety Management System;  
"services" means services supplied by DJH to the Client as set out in DJH's quote, and includes any goods provided in connection with the services; and  
"Terms" means these Terms and Conditions of Trade.
2. Basis of Contract
  - 2.1 Unless otherwise agreed by DJH in writing, the Terms apply exclusively to every Contract and cannot be varied or replaced by any other terms, including the Client's terms and conditions of engagement (if any).
  - 2.2 Any quote provided by DJH to the Client for the proposed supply of services is valid for 30 days, is an invitation to treat only, and only valid if in writing.
  - 2.3 The Terms may include additional terms in DJH's quote, which are not inconsistent with the Terms.
  - 2.4 The Client must accurately disclose to DJH the nature of the services required. DJH may rely on such information when quoting for and arranging the provision of the services.
- 2.5 A Contract is accepted by DJH when DJH accepts, in writing or electronic means, an offer from the Client or provides the Client with the services.
- 2.6 DJH has discretion to refuse to accept any offer.
- 2.7 The Client must provide DJH with its specific requirements, if any, in relation to the services.
- 2.8 DJH may vary or amend these Terms by written notice to the Client. Any variations or amendments will apply to services provided after the notice date.
3. Pricing
  - 3.1 Unless otherwise specified, prices quoted for the supply of the services include GST and any other taxes or duties imposed on or in relation to the services.
  - 3.2 If the Client requests any changes or additions to the scope of services, DJH may:
    - (a) reject the request for the variation;
    - (b) increase the price to account for the variation; or
    - (c) provide a revised quote for the services.
  - 3.3 Where there is any change in DJH's costs incurred in relation to the services, DJH may vary its price to take account of any such change, by notifying the Client.
4. Payment
  - 4.1 Unless otherwise agreed in writing:
    - (a) a 50% deposit must be made upon execution of the Terms;
    - (b) Subject to 4.1(c), the balance must be paid within 14 days of the date of DJH's invoice.
    - (c) DJH reserves the right to require payment of the balance in full on completion of the services.
  - 4.2 DJH may make part provision of services and may invoice the Client for the services provided.
  - 4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
  - 4.4 Payment terms may be revoked or amended at DJH's discretion immediately upon giving the Client written notice.
  - 4.5 The time for payment is of the essence.
  - 4.6 All payments from the Client to DJH must be made without any deduction or set-off.
5. Payment Default
  - 5.1 If the Client defaults in payment by the due date of any amount payable to DJH, then all money which would become payable by the Client to DJH at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Client, and DJH may, without prejudice to any of its other accrued or contingent rights:
    - (a) charge the Client interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2% for the period from the due date until the date of payment in full;
    - (b) charge the Client for, and the Client must indemnify DJH from, all costs and expenses (including all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Contract;
    - (c) cease or suspend supply of any further services to the Client;

- (d) by written notice to the Client, terminate any uncompleted Contract with the Client.
- 5.2 Clauses 5.1(c) and (d) may also be relied upon, at DJH's option:
- (a) where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Client is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.
6. Obligations of the Parties
- 6.1 The Client must provide DJH with all information and assistance reasonably required to perform the services.
- 6.2 DJH may refuse to provide the services until all information and assistance under clause 6.1 has been provided by the Client.
- 6.3 The Client indemnifies DJH against all costs, claims, damage, fines, expenses and loss suffered by DJH as a result of the Client's failure to provide correct, accurate and complete information.
- 6.4 If the services include the provision of an OHSMS, the OHSMS will be developed as standard using AS/NZS 4801 as a guide. DJH will not guarantee that the OHSMS will meet all AS/NZS 4801 auditable criteria unless stipulated at part of the services.
7. Performance of Contract
- 7.1 Any period or date for provision of the services stated by DJH is an estimate only and not a contractual commitment. If DJH cannot complete the services by any estimated date, it will do so within a reasonable time.
- 7.2 The Client indemnifies DJH against any loss or damage suffered by DJH, its sub-contractors or employees as a result of providing the services, except where the Client is a consumer and DJH has not used due care and skill.
8. Disclaimer and Liability
- 8.1 DJH does not guarantee certification of any OHSMS.
- 8.2 The services do not in themselves equate to compliance with applicable health and safety laws and regulations. The Client must implement training or systems appropriately and be aware of all of its obligations under these laws and regulations.
- 8.3 Except as the Terms specifically state, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose or performance of the services or any contractual remedy for their failure.
- 8.4 If the Client is a consumer nothing in these Terms restricts, limits or modifies the Client's rights or remedies against DJH for failure of a statutory guarantee under the ACL.
- 8.5 Except to the extent of any liability imposed by the ACL, DJH is not liable:
- (a) to the Client in any way arising under or in connection with the provision of the services;
- (b) for any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 8.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of services which cannot be excluded, restricted or modified.
9. Confidential Information
- 9.1 A party ("Recipient") receiving Confidential Information from the other party ("Discloser") shall not, at any time except by the direction of the Discloser and except insofar as may be reasonably necessary for the performance of the services, divulge either directly or indirectly to any person or persons, company or companies for any purpose, any Confidential Information and shall at all times keep confidential all secrets of the Discloser and its subsidiary companies and/or joint ventures.
- 9.2 The Recipient shall not at any time directly or indirectly use in any manner whatsoever whether commercial or for private research any Confidential Information obtained from the Discloser in the course of or in relation to the performance of the services, except pursuant to the Recipient's obligations under this Contract or otherwise with the written consent of the Discloser.
10. Intellectual Property
- 10.1 DJH grants to the Client a non-exclusive licence to use the Intellectual Property for the sole purpose of receiving the services ("Licence"). The Client acknowledges that the services are provided to the Client with regard to the specific circumstances of the Client.
- 10.2 The Client acknowledges that it has no proprietary right or interest in the Intellectual Property. The Client must not sub-licence or attempt to sub-licence the Licence to any third party, nor copy or provide the Intellectual Property to any third party without DJH's prior written consent.
- 10.3 The Client must not register or attempt to register or record anywhere in the world any of the Intellectual Property or anything similar to it, or aid or abet anyone else to do so.
- 10.4 The Client hereby grants and irrevocably appoints DJH as its Attorney to execute all documents and to deliver and do all such acts, matters and things which may be necessary to vest all rights, title and interest in the property comprising the Intellectual Property in DJH absolutely as sole beneficial owner or to effect the transfer thereof.
- 10.5 Where by virtue of the Copyright Act 1968, or any other Act of any Federal or State Parliament copyright in the Copyright Material would vest in the Client, the Client hereby assigns such copyright to DJH.
- 10.6 The Client must not in any way modify, rewrite or alter the Copyright Material, use the Copyright Material in an unauthorised manner or for unauthorised purposes unless with DJH's written permission.
- 10.7 The Client is solely responsible and shall indemnify and keep DJH indemnified for and in respect of any damage, misuse or loss to or of DJH's Intellectual Property where such damage, misuse or loss was caused by neglect or omission or breach of this Contract by the Client.
- 10.8 The Client must immediately bring to DJH's attention any acts or threatened acts of infringement or attack on

the validity of the Intellectual Property, which may come to its attention.

- 11. Cancellation
- 11.1 If DJH is unable to provide the services, then it may cancel the Client's order (even if it has been accepted) by written notice to the Client.
- 11.2 No purported cancellation or suspension of an order or any part of it by the Client is binding on DJH once the order has been accepted.
- 12. Force Majeure
- 12.1 DJH is not liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, breakdown, import or export restrictions, acts of God, environmental conditions, acts or threats of terrorism or war. If an event of force majeure occurs, DJH may suspend or terminate the Contract by written notice to the Client.

- 13. Miscellaneous
- 13.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 13.2 DJH's failure to enforce any of these Terms will not be construed as a waiver of any of DJH's rights.
- 13.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 13.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

**By signing below, the Client agrees that:**

- it requests DJH to provide the services;
- it has read and understood DJH's Terms and Conditions for Provision of Services;
- it agrees that the Terms and Conditions for Provision of Services apply to the supply of the services to it; and
- If DJH accepts its offer, a binding agreement is made.

Signed by: .....

Print Name: .....

For and on behalf of the Client.