

Conditions of Engagement

- 1 DLCS International Pty Ltd (ABN 84 060 469 936) trading as DLCS shall perform the Services in accordance with these conditions, including the Special Conditions and the attached Fee Proposal, which, when read together, form the contract (“**Contract**”) between you (the “**Client**”) and DLCS. If you elect to confirm our engagement other than by signing a duplicate of the Fee Proposal, by sending a purchase order or other document, and it contains alternative terms and conditions, those terms and conditions will be of no effect. For the avoidance of doubt, DLCS does not, and will not, provide consulting services under or in relation to these Conditions of Engagement or the Fee Proposal.
- 2 DLCS must commence the Services as soon as practicable after this Contract is executed by both parties and complete the Services by the Due Dates or, if none are stated, within a reasonable period of time. If DLCS is delayed in performing its obligations by an act or event beyond its reasonable control, time for performing the obligations will be extended by a time equal to the delay.
- 3 DLCS will perform the Services to the standard of skill, care and diligence as is reasonably expected of a professional performing the same or similar services.
- 4 The Client and DLCS may agree in writing to vary the Services. The value for each variation shall be calculated based on the Fee or as agreed between DLCS and the Client. Time for performing the Services shall be extended by a time equal to the variation.
- 5 The Client must pay to DLCS the Fee, the reimbursable expenses (as set out in the Fees Proposal), the value of any variation in accordance with clause 4, and any reasonable costs incurred by DLCS in performing its obligations under this Contract and agreed to by the Client.
- 6 DLCS may claim payment progressively throughout the Commission, corresponding with the value of work undertaken during the period for the payment claim.
- 7 The Client must pay DLCS the amount payable under this Contract within **fourteen days** of the date of a payment claim. Overdue payments will be subject to compound interest charged at the most recent interest rate as determined by the Reserve Bank of Australia for the unpaid period plus two per cent per annum calculated daily. DLCS may immediately suspend certification if the fees are unpaid. Additional fees may apply to reactivate the certificate.
- 8 The Client must provide to DLCS all relevant, up-to-date and accurate information and documents relevant to the Services at the commencement, and during the term of, this Contract. DLCS may rely on information and documents provided by the Client, but is under no duty to verify their accuracy or completeness.
- 9 DLCS’ total aggregate Liability to the Client and to any third party is limited to the Fee or the cost of re-performing the Services, whichever is the lesser. Liability arising under this clause is reduced to the extent it arises out of or in connection with any negligent act or omission or breach of contract by the Client. Neither party is liable to the other for loss of actual or anticipated revenue or profits, increased capital or financing costs, increased operational costs or increased costs of borrowing, pure economic loss, exemplary or punitive damages or indirect or consequential damages. Notwithstanding any other term in the Contract, DLCS will not be liable to the Client or any third party for Liability which arises due to any matter beyond our reasonable control or which could not reasonably be foreseen.
- 10 Twelve months from the date of DLCS’ final invoice, each party releases the other from all current and future Liability, save for the Client’s obligation to pay the Fee and any claim or dispute that has been notified in writing before that date.
- 11 DLCS must maintain insurance policies that it deems necessary for the Services (in its absolute discretion).
- 12 Intellectual property rights in any drawings, reports, specifications, bills of quantity, calculations and other documents provided, or created by DLCS in connection with the performance of the Services remain the property of DLCS. Subject to each party complying with its obligations under the Contract, each party provides to the other a royalty-free, non-exclusive, non-transferable licence to use intellectual property either belonging to that party or able to be provided by it whether under sub-licence or otherwise, for the sole purpose of performing the Services and completing the Commission.
- 13 Unless DLCS expressly agrees otherwise:
 - (a) the Services are solely for the use and benefit of the Client; and
 - (b) DLCS does not accept any Liability, whether direct or indirect, suffered or incurred by any third party placing any reliance on the performance of the Services or any documents, materials or advice arising from or in connection with the Services.
- 14 The Client indemnifies DLCS from any Liability arising out of:
 - (a) claims by third parties regarding third party use of, or reliance on, the Services;
 - (b) the provision of the Services except to the extent such Liability was directly caused by DLCS’ gross negligence;
 - (c) the use or misuse by the Client of a Certificate or the Trade mark Licences; and
 - (d) an act or omission of the Client.
- 15 Any dispute between the Client and DLCS may be notified in writing by a party to the other party. If a dispute is to be notified, it must be delivered by hand or registered post, and adequately detail the dispute. Within seven days of service of a notice, senior representatives from each party with authority to settle the dispute must meet and use best endeavours to resolve the dispute. If the dispute is not resolved within seven days (or other period as agreed between the parties), either party may by written notice refer the dispute to a mediator appointed by both parties, or failing such agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia. If the dispute is not resolved by mediation, either party may commence legal proceedings or such alternative dispute resolution proceedings as agreed in writing by the parties. A party cannot comment legal proceedings unless it has issued a notice under this clause and the requirements of this clause have been complied with.
- 16 Clause 15 does not prevent a party from instituting proceedings in a competent court of law to seek injunctive or urgent declaratory relief or DLCS instituting proceedings at any time to recover money owing by the Client.
- 17 Either party may terminate this Contract for any reason by providing three months prior written notice to the other party. A party may terminate this Contract if the other party commits a material breach of the Contract and does not rectify the breach within fourteen days of being notified in writing of the breach. If the material breach is the Client’s failure to pay the Fee, DLCS may suspend the Services, cancel the Client’s Certificate of Conformity or terminate the Contract. The parties may terminate the Contract at any time by mutual written agreement. Termination shall be without prejudice to any claim that either party may have against the other in respect of any breach of the terms of the Contract that occurred prior to the date of the termination. Where the client terminates the agreement, any balance of fee as set out in the Fee Proposal shall be considered as outstanding and payable to DLCS.
- 18 A party may only assign, novate or otherwise transfer any or all of its rights or obligations under the Contract with the prior written consent of the other party, which must not be unreasonably withheld. DLCS may appoint a suitably qualified and competent sub-consultant to assist DLCS at any time and without the Client’s consent.

- 19 The parties must keep confidential all information marked "confidential" or which by its nature is confidential. This does not apply where the information is (a) in the public domain (other than through a breach of this Contract); (b) required by law to be disclosed; (c) disclosed to a party's financial or legal advisors; or (d) used by DLCS for marketing purposes, but then only to the extent that DLCS makes non-specific statements.
- 20 DLCS complies with the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (Codes) where applicable to the Services of DLCS.
- 21 This Contract will be governed by the laws of the State, Territory or Country. The parties submit to the exclusive jurisdiction of the courts of the applicable State, Territory or Country.
- 22 The terms of this Contract apply to the maximum extent permitted by law. Where the terms of this Contract conflict or are inconsistent with a relevant statute or regulation governing the Services, the relevant statute or regulation will prevail to the extent of such inconsistency. The Contract constitutes the entire contract for the performance of the Services and supersedes all previous arrangements, correspondence, tenders, representations, proposals, understandings and communications whether written or oral.
- 23 If any provision of the Contract is deemed to be void, invalid or unenforceable, all other provisions which are self-sustaining and capable of separate enforcement, shall, to the maximum extent permitted by law, continue to be valid and enforceable.
- 24 A notice shall be deemed to have been properly delivered and served if it is sent by a party's nominated representative to the address of the other party's nominated representative. DLCS' nominated representative is detailed in the attached Fees Proposal. The Client must notify DLCS of the Client's nominated representative at the commencement of this Contract.
- 25 DLCS respects the importance of Impartiality in carrying out its Management System Certification and as such has processes in place to manage Conflict of Interest to ensure objectivity of its certification activities.

Special Conditions

- 1 Following a Conformity Assessment or a Reassessment, DLCS will issue a Certificate of Conformity to the Client and update the JAS-ANZ register where, in DLCS' reasonable opinion, the Client's documentation, information, systems and processes fully and satisfactorily meets the requirements of the Standard.
- 2 The Client must only use a Certificate of Conformity and a Certification Mark:
 - (a) during the Validity Period;
 - (b) for the purposes of demonstrating the Client's management systems comply with the Standard; and
 - (c) strictly in accordance with the DLCS Certification Mark Specifications and Conditions for Use and such are incorporated by reference into this Contract.
- 3 If the Client wishes to maintain a Certificate of Conformity following the end of the Validity Period, the Client must undergo a Reassessment; otherwise the Certificate of Conformity will lapse.
- 4 DLCS will appoint a Client Manager to manage the relationship with the Client and the Services.
- 5 The Client must at all times comply with:
 - (a) all reasonable requirements necessary for the issuance of the Certificate of Conformity and the ongoing surveillance assessment conformity including, without limitation, all statutes, rules, regulations issued by any statutory or other competent authority (including, without limitation, JAS-ANZ);
 - (b) all reasonable requirements of DLCS as are necessary to enable the Services to be provided.
- 6 The Client warrants the completeness and accuracy of all documents and information supplied to DLCS for the purposes of this Contract. DLCS relies upon this warranty to provide the Services.
- 7 The Client is solely responsible for establishing and maintaining processes to ensure that their clients are not misled about their Scope of Certification.
- 8 The Client must maintain up-to-date processes of all client complaints and take remedial action relating to products or services covered by the Certificate of Conformity.
- 9 Where the Client has a certified ISMS (ISO 27001) and on receipt of a complaint, the certified Client shall establish, and where appropriate report on, the cause of the complaint, including any predetermining (or predisposing) factors within the Client's ISMS. The Client shall use such investigations to develop remedial/corrective action, which shall include measures for
 - (a) notification to appropriate authorities if required by regulation;
 - (b) restoring conformity;
 - (c) preventing recurrence;
 - (d) evaluating and mitigating any adverse security incidents and their associated impacts;
 - (e) ensuring satisfactory interaction with other components of the ISMS;
 - (f) assessing the effectiveness of the remedial / corrective measures adopted.
- 10 The Client may cancel the Services or a component of the Services at any time by providing DLCS with written notice. The following cancellation fees apply if the Client cancels all or part of the Services prior to the date on which those particular Services or part thereof are due to be performed:
 - (a) > 20 working days' advance notice – no additional charge;
 - (b) 10 – 20 working days' advance notice - 50% of the Fee for the cancelled Services;
 - (c) < 10 working days' advance notice - 100% of the Fee for the cancelled Services.
- 11 Where a Substantial Change occurs:
 - (a) the Client must promptly notify DLCS in writing and include all relevant particulars of the Substantial Change; and
 - (b) DLCS may charge the Client additional fees as advised in writing by DLCS at the time.
- 12 DLCS may adjust the Fees annually to reflect changes in the Consumer Price Index as published by the Australian Bureau of Statistics, from time to time. DLCS will notify the Client in advance of such adjustments.
- 13 Notwithstanding clause 19 of the Conditions of Engagement, DLCS may:
 - a) Register the Client's Certificate of Conformity details with JAS-ANZ which are publicly displayed on the Register of Certified Organisations (www.jas-anz.org/register); and
 - b) Disclose the Client's certification file for the purposes of DLCS' internal and external audit processes by external bodies (for example, JAS-ANZ and the Independent Business Committee).
- 14 Upon request by DLCS, the Client must provide JAS-ANZ personnel with full access to the Client's premises for the purposes of witnessing DLCS' assessment team performing an assessment at the Client's premises.
- 15 DLCS may suspend or withdraw a Certificate of Conformity at any time where, in DLCS' reasonable opinion, the Client:
 - (a) fails to promptly notify DLCS of a Substantial Change;
 - (b) has failed to meet OHS certification requirements under its management system relating to item (h) of Substantial Change;
 - (c) fails to complete corrective actions necessary to obtain or maintain a Certificate of Conformity as reasonably required by DLCS within the time stipulated by DLCS;
 - (d) fails to use a Certificate of Conformity or a Certification Mark in accordance with the terms of this Contract and the Specifications for Use;
 - (e) fails to pay the Fees when due and payable; or

- (f) brings DLCS or JAS-ANZ into disrepute in any way as reasonably determined by DLCS.

16 Where:

- (a) a Certificate of Conformity is withdrawn or suspended;
- (b) the Client is in breach of this Contract;
- (c) this Contract is terminated or expires; or
- (d) the Client fails to arrange a Reassessment prior to the end of the Validity Period;

then:

- (e) upon receiving written notice of such from DLCS, the Client must:
 - (i) immediately cease using the Certificate of Conformity and the Certification Mark;
 - (ii) promptly return the original Certificate of Conformity to DLCS; and
- (f) DLCS must promptly advise JAS-ANZ to update its register.

17 It may be necessary for DLCS to conduct assessments of Clients at short notice or unannounced:

- (a) to investigate complaints,
- (b) in response to Substantial Changes, or
- (c) as follow up on suspended Clients.

18 Where the Client has a certified E-Waste management system (AS/NZS 5377), the certified Client shall maintain records of all communications including complaints and corrective action taken in accordance with the requirements of AS/NZS 5377, and make them available to DLCS on request. This includes correspondence, recommendations and actions documented by regulatory bodies; or correspondence with any other client, stakeholder, organisation or person relating to complaints about the client or the client's compliance with the requirements of AS/NZS 5377 or related matters (e.g. environmental or safety incidents).

19 DLCS and its employees and representatives must observe the Client's safety and security policies and procedures and comply with any other lawful direction when on the Client's premises. The Client must provide all DLCS employees and representatives attending the Client's premises with appropriate personal protective clothing and safety equipment.

20 Where the Client has a certified ISMS (ISO 27001), the certified Client shall make all the necessary arrangements for the conduct of the certification assessment, including provision for examining documentation and the access to all areas, records (including internal audit reports and reports of independent reviews of information security) and personnel for the purposes of certification assessment, recertification assessment and resolution of complaints.

21 DLCS' methodology for undertaking assessments uses a sampling approach across both geographies and processes and hence it is not to be construed or implied that the organisation has meet with its legislative compliance obligations.

22 Where the Conditions of Engagement conflict or are inconsistent with the Special Conditions, the Conditions of Engagement will prevail to the extent of such inconsistency.

23 Our terms for payment are as defined in the Conditions of Engagement clause 7. DLCS does not accept a client's purchase order being raised after the issue of our Invoice. It is the client's responsibility to inform DLCS of the need for a purchase order before the deliverable of any of our services.

24 The following terms referenced in these Conditions of Engagement have the meanings below:

"Certificate of Conformity" means a Certificate of Conformity issued by DLCS to the Client evidencing that the Client complies with the Standard.

"Certification Mark" means the legally registered trademark issued under the procedures of DLCS and comprises of words and symbol. It may also include the equivalent mark of JAS-ANZ, but strictly in accordance with the DLCS Certification Mark Specifications and Condition of Use.

"Conformity Assessment" means a systematic, independent and documented review of the Client's systems and processes to evaluate whether the assessment criteria are fulfilled.

"Due Date" means the due date(s) set out in the Fee Proposal in respect of each Service component.

"Fee" means those fees set out in the Fee Proposal.

"Independent Business Committee" means the body established under ISO17021-1:2015.

"JAS-ANZ" means the Joint Accreditation System of Australia and New Zealand ABN 49 614 982 550 of PO Box 5634, Hughes ACT 2605 Australia.

"Liability" means any claim, loss, damage, fine or liability arising out of or in connection with the Contract, whether arising in contract, tort (including negligence) or otherwise.

"Reassessment" means a new Conformity Assessment.

"Second Party Assessment" means an independent assessment of the Client's supply chain and the issuance of a report. For the avoidance of doubt, a Second Party Assessment is outside of the JAS-ANZ and Certificate of Conformity process and, therefore, the terms of this Contract which specifically deal with such matters do not apply.

"Services" means the services provided by DLCS as set out in the Fee Proposal.

"Specifications for Use" means the document of the same name which DLCS will provide to the Client at or prior to the date of this Contract.

"Standard(s)" has the meaning given to that term in the Fees Proposal.

"Substantial Change" means any conditions, acts or occurrences which could reasonably be expected to affect DLCS' decision to issue or maintain a Certificate of Conformity including, without limitation, the following events:

- (a) Client request to alter, modify, limit or expand the Services;
- (b) Change in the Client's intended use of the Trademark;
- (c) Receipt of major complaints against the Client;
- (d) Client product recalls and/or failures;
- (e) New Client product lines;
- (f) Changes to the Client's product(s) and/or processes and/or systems;
- (g) Change in address of Client's site(s) and/or client corporate restructures and/or changes in ownership inclusive of changes due to mergers, acquisition of new businesses, scope addition, introduction of new products and services
- (h) Fatal incidents, serious injuries, occupational disease or breach of regulation necessitating the involvement of a regulatory authority;
- (i) Changes affecting the certified product(s) design, impact on form, fit and function (including performance and/or durability)
- (j) Changes affecting the certified product(s) due to change in procured material source and/or new/changed supplier or contractor of the procured material by the Client.

"Surveillance" means **an** ongoing periodic assessment to ensure the Client continues to comply with the Certification Standard(s).

"ISMS" means Information Security Management Systems.

"E-Waste" means Electronic Waste.