

Operating as:
FCT Combustion Pty Ltd- ABN 94064722854
FCT Flames Pty Ltd- ABN 33115089195
FCT ACTech Pty Ltd- ABN 84089782249
FCT Inc.- EIN 233031647
FCT GmbH- Ust-IdNr.: DE257934174

Standard Commercial Terms and Conditions for Service Work

General

This "Agreement" constitutes a contract between FCT International (means any of the FCT companies, including FCT-Combustion Pty Ltd ABN 94 064 722 854, FCT-ACTech Pty Ltd ABN 84 089 782 249, FCT Flames Pty Ltd ABN 33 115 089 195 or any associated or subsidiary companies of the above) hereinafter referred to as the Contractor and the Customer, when accepted in writing by the Contractor. Any of the terms or provisions of the Customer's order which are in any way inconsistent with, or in addition to, the terms and conditions contained herein shall not be binding on either party unless expressly accepted in writing by its authorized representatives.

1. Commencement of Contract

Unless stated otherwise and agreed by both parties in writing, the commencement date of the contract shall be 5 working days from receipt of Customer Purchase Order and consequent written confirmation from Contractor that Customer Purchase Order is accepted.

2. Delivery of Contract

The contract delivery date shall be determined from the later of:

- a) Receipt of full payment of 1st instalment as described in the "Payment Terms" or
- b) receipt of the Customer Purchase Order and consequent written confirmation from Contractor that Customer Purchase Order is accepted or

provided that acceptance of Contractor's Offer is on the basis of the terms and conditions offered in Contractor's Quote/ Proposal including any changes agreed to in writing prior to the date of acceptance.

3. Scope

During the term of this Agreement, Customer hereby engages Contractor and Contractor agrees to perform the tasks, obligations, and services set forth in the Service Work /Product (Maintenance) Support Agreement. The Service Work provided by the Contractor can include but is not limited to Physical and CFD Modelling, Training and Safety Audits, Consultancy & Design, Process & Plant Audits, Process Optimization and Plant Modernisation, Energy Audits and Combustion Service Agreements.

4. Exclusions to Scope of Work

Scope of work not covered under this Agreement will be quoted and billed additionally. Contractor shall invoice Customer separately for such work, as incurred, and Customer shall pay such invoices within the time specified thereon. Exclusions include any work which is outside of the scope of work defined in Annexure B of this Agreement.

5. Contractual Price and Service Work Rates

5.1 The price given in the Service Work/ Maintenance Agreement Quote is on the basis that each site visit will be performed by only one engineer appointed by Contractor. If more than one engineer is required, then all the rates quoted will be multiplied with the number of engineers required for the service job. Same is implied for any desktop studies, modelling work, R&D designs, or any other Service Work required to complete the agreement herein that mandates specialised work at Contractors designated facilities

5.2 Rates offered in the Service Work/ Maintenance Agreement quotation are exclusive of GST/ VAT/Withholding Tax/Government charges and are not subject to rise or fall for the duration of the contract.

5.3 Daily rates quoted in the Service Work/ Maintenance Agreement quotation is based on up to maximum 10 working hours per day including travelling time to and from local accommodation, when working on site and 8 hours/ day for desktop studies, modelling work, R&D designs, or any other Service Work required to complete the agreement herein that mandates specialised work at Contractors designated facilities. Where hours worked per day exceed 10, each additional hour is charged at AUD 200, to a maximum of 14 hours. Daily Rate includes labour only. It excludes all associated daily expenses; transport, accommodation and meals. Where needed and where not provided by the customer these expenses will be invoiced as additional charges at cost plus 15% administrative charge. If such an event occurs, an additional purchase order will be required. Days or part thereof where the engineer is at site but unable to work for reasons beyond their control (eg. industrial action, public holidays, weekend shutout, unavailable Customer personnel, etc), will be charged at the daily (per diem) rate.

Any extra days required under this Agreement will be invoiced at the same daily (per diem) rate stated in the Service Work/ Maintenance Agreement quotation. If such an event occurs, an additional purchase order will be required.

6. Variation

By mutual agreement the order may be varied with respect to scope of work, design, specifications, quantity and delivery destination. In such a case, when Customer's new requirements alter in any way his previous Purchase Order, the Contractor shall provide a new quote reflecting the new circumstances. It is understood that any new quote can cause an increase or decrease in the price of the Service Work/ Maintenance Agreement or in the lead-time required for delivering the services. By committing to the new order issued, the Contractor shall promptly notify the Customer by issuing a new Sales Order Confirmation reflecting both Customer's new requests and Contractor's new capabilities under the changed circumstances.

In any event, changes shall not be binding upon nor be put into effect by either party unless confirmed in writing by its appropriate representative.

7. Payment Terms

Invoicing and payment shall be in accordance with terms stipulated in the Quotation issued by Contractor as a pre-condition to this agreement.

Payments will be made in a number of installments corresponding to either the equivalent number of site visits agreed and offered in the Service Work/ Maintenance Agreement Quotation or any other milestones agreed in writing. The Contractor will proceed with the correspondent service work /each site visit work only after receiving in full the matching installment.

Unless otherwise stated in the Quotation or prior agreed between parties, all invoices issued are due within 30 days of invoice date. On accounts showing as past due (defined as having an outstanding balance of 45 days or more), Contractor reserves the right to suspend services until the account is returned to current status.

Payment shall be made in the currency specified in the Service Work /Maintenance Agreement Quotation by cheque or electronic transfer only, according to Contractor's invoices instructions.

8. Late payment

The Customer must pay interest on all amounts not paid by the due date at the higher of:

- i. the annual interest rate applicable to the Contractor's overdraft account plus 5% per annum; and
- ii. 18% per annum.

All interest payable under clauses 5 and 7 accrues daily on the daily unpaid amount until all amounts (including interest) are paid in full.

9. Validity

Any Service Work or Maintenance Agreement quotation is valid for but not exceeding 60 days.

10. Compensation

Contractor will be compensated for all work performed under this Agreement on the basis set forth herein.

11. Holidays

Technical Support and Service will be provided per this Agreement with the exception of:

- a) Observed Australian State and Commonwealth public holidays unless prior arrangement has been made with the Contractor- if the Service agreement is delivered by the Contractor with personnel from its Australian premises.
- b) Observed US federal and state gazetted public holidays unless prior arrangement has been made with the Contractor- if the Service agreement is delivered by the Contractor with personnel from its US premises.

Note: Contractor will provide limited emergency support, as available, on these holidays, with the exclusive exception of Christmas Day as "Exclusion" to this Agreement.

This work will be quoted and billed on a "Time and Material" basis as per the Contractor's standard T&M rate applicable at the time.

12. Reimbursement of Expenses

Excluding those specified within the Service Work or Maintenance Agreement Quotation, or where fixed expense-inclusive rates are quoted, Contractor will be reimbursed for all reasonable and necessary expenses incurred pursuant to clause 5.3 in connection with the performance of its duties under this Agreement.

Contractor shall provide an itemised account and if necessary supporting evidence of reimbursable expenses.

13. Access to Customer's Facilities

In connection with Contractor's performance of service hereunder at Customer's facilities (if necessary or appropriate), Customer shall allow Contractor, at no charge to Contractor

- (a) full and free access to all equipment specified under this Agreement and any and all associated peripherals
- (b) to use necessary machines, communications facilities and the like and
- (c) to use other reasonable facilities, including without limitation secure storage space and a designated work area with comfortable climate and lighting
- (d) access and use of local transport and messing where it is the only option available or where it is specified to be provided in the contract.

14. Limited Warranty Disclaimer

Contractor warrants that all equipment, software, and services delivered hereunder will be free from material defects known to Contractor at installation (or at delivery date) for a period of ninety (90) days from the date of installation/delivery unless this agreement is sooner terminated as provided herein. The Contractor warrants that the services provided hereunder will comply with the requirements expressly set forth in these Terms and Conditions and will otherwise be performed in accordance with generally accepted industry practice by competent personnel. In the event that any services fail to comply with the aforementioned standard, the Contractor will, at its option, provided it is promptly notified in writing upon the discovery of such failure, either repeat such non-complying services at no additional charge or refund to Customer all fees theretofore paid by Customer with respect to such non-complying services. Notwithstanding the aforementioned, the cost of any such repeat of services which generates results consistent with the original results will be at Customer's expense. Items not covered under warranty include, but are not limited to:

- Components that have been opened or tampered with, without the express approval of Contractor
- Non-genuine or unapproved Contractor design or parts and any direct, indirect or consequential damage resulting from removal, insertion and use of these parts.
- Any parts repaired by an unapproved Contractor repairer and any direct, indirect or consequential damage resulting from removal, insertion and use of these parts.
- Using non-standard part(s) not approved by Contractor in the installation/modification/repair/ service or maintenance work.
- Any item determined by Contractor to be of a consumable nature and listed in the consumable spares kit from that product
- Costs incurred through an incorrect diagnosis on poor performance of the installation/modification/repair/ service or maintenance work; this also applies to corrections of installation that did not meet Contractor specifications. In these cases, the costs incurred are Customer's responsibility.

Warranty on installation/commissioning/modification/repairs/service/audits or maintenance work for any equipment and/or software shall only be valid if Contractor service engineers or Contractor accredited 3rd parties supervise or otherwise approve the installation & commissioning/modification/repair/service work on the respective product and/or software.

Equally all the scheduled service work/audits/ measurements/ repairs/rectifications/modifications performed during the warranty period shall be made only by Contractor service engineers or Contractor accredited 3rd parties; any breach of the aforementioned requirement will void in full the warranty of the service work/parts and also the remainder of the warranty for that equipment.

THE AFOREMENTIONED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY THE CONTRACTOR IN CONNECTION WITH THE SERVICES PERFORMED HEREUNDER, AND IS IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN. CONTRACTOR DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES FOR FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

EXCLUSION: New Equipment and/or Replacement Parts purchased separately to this contract are covered by a separate parts warranty provision.

15. Limitation of Liability

Customer agrees that Contractor's total liability hereunder shall not exceed the amount paid for services or support by Customer to Contractor for the three (3) months immediately preceding the occurrence giving rise to any claim by Customer. IN NO EVENT SHALL CONTRACTOR HAVE ANY LIABILITY TO CUSTOMER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF ANY WARRANTY OR COVENANT CONTAINED HEREIN OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, LOSS OF USE, COST OF CAPITAL OR CLAIMS OF CUSTOMER OR OF CUSTOMER'S EMPLOYEES OR AGENTS.

16. Obligations

Each party's obligations hereunder are expressly subject to the other party's not being in default under any Agreement between Customer and Contractor.

17. Assignment

This Agreement and/or any right or obligation herein shall not be assigned or delegated by the Customer without the prior written approval of the Contractor.

Irrespective of any assignment, the Contractor will be responsible for all aspects of project management including coordination of activities, quality control, contract variations and amendments, financial arrangements and communication of notices etc.

18. Applicable Regulations

Contractor will comply with applicable codes and laws in the country where Customer's site is located. Customer will comply with applicable codes and laws in the country where Customer's site is located in relation to installation and operation of the equipment.

19. Confidentiality, Intellectual Property and Copyright

Unless otherwise agreed in writing the copyright of all reports, documents, software and information produced by Contractor is vested in Contractor, and the Customer's right to their use is restricted wholly to the purpose for which the Services are provided pursuant to this contract, and no part of the reports, documents, software and information may be used for other purposes without Contractor's written permission. Further, all right, title and interest in and to any work product, including, but not limited to, any reports, drawings, photographs, data and specifications, whether stored on paper, computer disks or otherwise, software programs, derivative works, discovery, invention, patent, know-how or improvement (together, the "Work Product") which may be conceived, created or developed as a result of or in connection with the Goods and/or Services shall be the sole property of Contractor, and, subject to the terms and conditions of this Agreement, Contractor shall grant a non-exclusive, non-transferable, royalty-free license to Customer to use the Work Product for its internal business purposes.

Contractor agrees that the staff involved in the conduct of the contract shall not, without the consent of the Customer, disclose any confidential information received from the Customer relevant to the project to parties outside this contract.

Neither the Customer, nor Contractor shall disclose to parties outside this contract any matter regarding this project without the express approval of the other, and where such disclosure involves any publication or release of written information the approval shall be in writing between the parties. Such disclosure shall not be deemed to include any transaction undertaken in the legitimate activities under the contract or a simple statement by Contractor seeking other projects that this project has been undertaken by Contractor.

20. Right to Terminate Contract

This Agreement shall be terminated on the completion of the Scope of Work as defined in Annexure B of the Agreement or at such other time and under such conditions as Contractor and the Customer mutually agree in writing. Upon such termination or cancellation Contractor shall be entitled to recover from the Customer all its costs, expenses and reasonable charges incurred up to the date of termination and any costs incurred in anticipation of the continuance of the work or the cancellation of any arrangements made, orders placed or the resale of equipment and materials made in anticipation of the continuance of the work.

21. Default by Contractor

In the event of any default by Contractor in carrying out the work specified by this contract (not being default caused by the Customer), the Customer may at his discretion give notice in writing of the default to Contractor requiring that the default be remedied within sixty (60) days after the date of service of the notice. If Contractor does not remedy the default within the time specified in the notice the Customer may terminate the Agreement as per Clause "Right to Terminate Contract". Contractor will not be responsible to the Customer for the costs and expenses incurred by the Customer by reason of the default and any losses or damages incurred by reason of the dependence by the Customer on the fulfilment of this Agreement or any consequential or incidental losses or damages or liability to any third party.

22. Default by Customer

In the event of any default by the Customer which prevents Contractor from carrying out the work specified in this Agreement Contractor may at its discretion and without prejudice to any other rights which it may have to terminate this Agreement under Clause "Right to Terminate Contract" give the Customer written notice of such default requesting him to remedy the default within sixty (60) days after the date of service of the notice or such further time specified. Should the Customer fail or refuse to remedy fully the default within the time specified Contractor may in its discretion terminate the Agreement and upon such determination Contractor shall be entitled to recover from the Customer all its costs, expenses and reasonable charges incurred up to the date of termination and any costs incurred in anticipation of the continuance of the work or the cancellation of any arrangements made, orders placed or the resale of equipment and materials made in anticipation of the continuance of the work.

23. Co-operation Between Contractor and Customer

Subject to these terms and conditions, all information obtained by Contractor relevant to the work done will be made available to the Customer during normal hours, and Contractor will communicate to the Customer all information pertinent to the work as it progresses. An authorised representative of the Customer may confer with the appropriate members of the Contractor staff at mutually agreed times for the purpose of providing such assistance as will make it possible for Contractor to achieve the objectives of the Service Work/ Maintenance Agreement.

Contractor welcomes the co-operation of the Customer in providing such information, assistance and co-operation as is necessary for Contractor to achieve the objectives of the Service Work/ Maintenance Agreement.

24. Relationship between Contractor and Customer

Nothing herein contained shall constitute Contractor or its servants, employees, directors, officers or advisors as agents or employees or servants of the Customer, but the relationship between Contractor and the Customer shall be and remain that of independent contractors.

25. Sub-contracting

Contractor reserves the right at its discretion to sub-contract all or any part of the work to be done or services to be supplied and, in so sub-contracting, Contractor's liability (if any) to the Customer shall be no more than its liability (if any) which it would have had if it had done the work or supplied the services itself.

26. Force Majeure

No party to the contract shall be liable to the other party for any delay attributable to "Force Majeure" which for the purposes of the contract shall mean any event which is not within the reasonable control of the party affected and could not have been prevented or overcome by the exercise of due diligence by the said party.

Without prejudice to the generality of the above the events falling within the "Force Majeure" include Acts of Government in their sovereign capacity, or by reasons of war, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lock-outs or acts of God (hereinafter referred to as "events").

For the purpose of this Clause the "event" shall not include any occurrence which continues for less than ten (10) consecutive calendar days. On the occurrence of any conditions of "Force Majeure" the party so affected shall within seven (7) days of the occurrence and cessation of such event give written notice of such event to the other party and use all reasonable endeavours to mitigate the effect upon fulfilment of its obligations under the contract and resume full performance of its obligations under the contract as soon as possible. Provided it can be established that the event(s) delayed performance of the contract, the time of performance of the contractual obligations shall then be extended by a period or periods of not more than the duration of such an event or events. However, if the event continues beyond ninety (90) days the parties to the Contract shall mutually decide the future course of action.

In the event it is determined that the Contract is to be terminated, the parties agree to pay each to the other any unearned portions of moneys paid, any outstanding expenses, charges, or costs incurred under the contract for work executed under the contract up to the notification of the event(s) which led to the termination of the Contract.

27. Contradictory Statement

If there is any contradictory statement or other inconsistency between these terms and conditions and in other sections of Contractor's Offer then the Contractor's Offer/ Quotation/ Proposal's terms and conditions shall prevail to the extent of the contradiction or inconsistency.

28. Separation Clause

The invalidity of any provision hereof shall not affect the validity of the remaining provisions hereof.

29. Arbitration

Any dispute which may arise as to the interpretation of these conditions shall be referred to an arbitrator to be appointed by agreement of both parties, or in default of agreement, by a single arbitrator appointed in accordance with the rules of arbitration applicable in South Australia, Australia for all contracts where delivery of the contract occurs outside of the United States of America and Pennsylvania, United States of America where delivery of the contract occurs within the United States of America and Canada.

Notwithstanding anything contained in the preceding subsection to the contrary, each party shall have the right to institute judicial proceedings against the other party or anyone acting by, through or under such other party in order to enforce the instituting party's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief.

30. Law Applicable to Contract

Contractor will comply with applicable codes and federal, state, and local laws and regulations regarding design and manufacture. Customer will comply with applicable codes and federal, state, and local laws and regulations regarding installation and operation of the equipment. Prices are based on applicable codes, laws, regulations, and the Contractor's manufacturing processes and procedures in effect at the time of Contractor's quotation or bid, and may be changed to reflect changes therein.

These conditions shall be construed in accordance with the laws in force in the State of South Australia, Australia for all contracts where delivery of the contract occurs outside of the United States of America and Pennsylvania, United States of America where delivery of the contract occurs within the United States of America and Canada.

31. Disclaimer

Any reports issued by Contractor are for the specific use of the Customer. Contractor disclaims any liability to a third party who uses the report without Contractor's written approval.

32. Hold Harmless or Waiver of Subrogation

Notwithstanding any other clauses in these Terms and Conditions any proposed Hold Harmless or Waiver of Subrogation is expressly negated.

33. Entire Agreement

This Agreement constitutes the entire understanding between the parties and there are no representations, warranties, covenants or obligations except as set forth herein. This Agreement supersedes all prior and temporary agreements, understandings and negotiations and discussions, written or oral, of the parties hereto, relating to the subject matter of this Agreement. This Agreement may only be amended by a written instrument duly executed by both parties.