



**EMC Technologies Pty Ltd**  
ABN 82 057 105 549  
176 Harrick Rd  
Keilor Park Victoria Australia 3042

Ph: + 613 9365 1000  
Fax: + 613 9331 7455  
email: [melb@emctech.com.au](mailto:melb@emctech.com.au)

## TERMS AND CONDITIONS

### 1. DEFINITIONS

In this agreement, the following definitions apply :

"EMCT" means EMC Technologies Pty Ltd (ABN 82 057 105 549) and fully owned subsidiaries including EMC Systems Pty Ltd (ABN 50 068 406 995), incorporated in the State of Victoria, Australia under the Corporations Law, having their principal place of business at 176 Harrick Rd Keilor Park Vic, 3042 Australia

"Equipment" means any equipment specified for testing or certification in the Estimate, as selected and supplied by the Customer, and includes such hardware, data, software, firmware, programs, documentation, specifications and records as may be necessary to enable EMCT to perform its obligations under this agreement;

"Estimate or Quote" means the Estimate submitted to the Customer and which is intended to serve as an indication only of the actual charges that shall be made by EMCT for its Services;

"Services" means the services as selected by the Customer which may be specified in the Estimate or Quote.

### 2. SCOPE OF AGREEMENT

2.1 Subject to the terms and conditions of this agreement, EMCT agrees to provide to the Customer the Services requested by the Customer from the range of services offered by EMCT in its Estimate or such other Services as are agreed between the parties.

2.2 Whether or not the purpose of the provision of the Services is wholly or partly to test or certify the Equipment, the Customer accepts full responsibility and liability for any Equipment which it manufactures, supplies, sells or offers for sale and which does or does not comply with any applicable standards or regulations in any country.

### 3. REQUEST FOR SERVICES

3.1 Prior to the provision of Services by EMCT, the Customer may submit a request for service.

3.2 EMCT may reject a Customer's application in its absolute discretion.

### 4. CHARGES

4.1 In consideration of EMCT providing the Services, the Customer agrees to pay to EMCT the charges for the Services calculated in accordance with the rates and charges usually charged by EMCT for the work performed.

4.2 Monthly progressive invoices will apply where upfront payment has not been made.

4.3 EMCT shall make an additional charge in relation to retesting, reassessment, and or delays due to non-compliant, faulty, modified or defective Equipment, or in delays in providing necessary documentation.

4.4 Unless other arrangements have been made in writing with EMCT Accounts Department, payment against invoices will be made prior to delivery of EMCT reports or the results of testing. All fees and charges payable by the Customer under this agreement are exclusive of any taxes, duties, fees or other government levies or charges which may be imposed on or in respect of EMCT's Services under this agreement or otherwise.

4.5 The Customer shall pay interest at 2% above the EMCT banker's overdraft rate on all overdue payments, calculated from the due date until payment is made and payable on demand.

4.6 The Customer shall pay all debt recovery costs including all legal, administration and debt collection costs.

4.7 If ongoing testing or certification cannot progress due to customer delays of greater than one month after initial testing has commenced, an invoice will be forwarded for work completed to date.

### 5. DELIVERY, RETURN AND COLLECTION OF EQUIPMENT

5.1 The Customer will be responsible for delivering to and from EMCT's premises at the Customer's cost and risk, any Equipment that may be the subject of the Services being provided by EMCT. Delivery includes the use of shipping services and couriers.

5.2 EMCT shall not be responsible for any delay in the provision of the Services caused by late arrival, faulty, non-compliant or defective Equipment, or due to inadequate instructions for use of the Equipment.

5.3 At the expiration or termination of this agreement the Customer shall be responsible for the prompt removal of all Equipment from EMCT's premises at the Customer's cost and risk, including the use of shipping services and couriers. Equipment will be available for collection during EMCT's usual business hours.

5.4 EMCT may agree to deliver the Equipment to the Customer, in which case the Customer will bear all the costs, expenses and risks associated with such delivery. Delivery of Equipment by EMCT to a third party (including the use of shipping services or couriers) will be deemed to be return of the Equipment to the Customer. The Customer will bear all costs, expenses and risks of such delivery.

5.5 All Equipment not collected within 21 days of the Customer being advised that it is available for collection will be held by EMCT at the sole risk of the Customer and EMCT reserves the right to levy a storage charge or waste disposal charges in respect of such Equipment.

## 6. EQUIPMENT DAMAGED OR DESTROYED AT EMCT PREMISES

**6.1** All Equipment delivered to EMCT's premises under this agreement will be held by EMCT for the performance of the Services at the Customer's sole risk.

**6.2** The Customer acknowledges that the Service provided may destroy or damage the Equipment. The Customer agrees to hold EMCT harmless without liability against the Equipment being destroyed or damaged either accidentally or intentionally while the Service is being provided.

## 7. ADVICE GIVEN

**7.1** When requested, EMCT will attempt to provide the most accurate advice available at the time. The information provided will reflect the best judgment of the person consulted. However subject to Clause 11.1, EMCT gives no warranty in respect of any opinion given and accepts no liability whatsoever for errors.

## 8. REPORTS AND CERTIFICATION STATEMENTS

**8.1** If the Services involve the provision of a report or certification statement, the Customer will be invoiced for the report or certification statement progressively or when it is finalised. On payment of the invoiced charges in accordance with Clause 4 and subject to clause 8.4, all property in the report or certification statement will pass to the Customer. The report or certification statement remains the property of EMCT until full payment is received.

**8.2** The report or certification statement and results held within the report or certification statement only relate to the sample of Equipment tested. If the Equipment has been varied to the Equipment provided for testing or certification by way of construction, performance, materials, components, firmware, software or any other form, then the report or certification statement provided by EMCT cannot be relied upon as proof of compliance, non-compliance, suitability for use or to be safe for supply or use. EMCT takes no responsibility for liabilities arising from the Equipment being varied from the test sample supplied by the Customer.

**8.3** The Customer acknowledges that EMCT is required under the Telecommunications Act, NATA accreditation and the local EMCT Quality Manual to keep a copy of the report or certification statement and associated documentation, and to make a copy of the report or certification statement available to the ACA or NATA on request, or other authorities as legally required. Subject to these requirements, EMCT will not copy or cause to be copied or disclose any details of the report or certification statement to a third party without the Customer's prior written consent.

**8.4** The Customer agrees that it will not reproduce, refer to or use the report or certification statement, except in its entirety, for any purpose whatsoever, without written permission from EMCT.

## 9. COMPLIANCE WITH LAW

**9.1** The Customer shall indemnify and hold harmless EMCT against all costs and liability incurred if EMCT's possession or processing of the Customer's Equipment constitutes a breach of the governing law or any other relevant law or regulation.

**9.2** EMCT may deliver such Equipment into the custody of a duly authorised law enforcement officer or government representative, officer or agency or provide such persons or instrumentalities with access to such Equipment if EMCT receives a request or demand from such person or instrumentality for such delivery or access.

**9.3** The Customer shall indemnify and hold harmless EMCT against all costs and liability incurred as a result of EMCT's possession and use of such Equipment or incurred as a result of delivering such Equipment to a third party including, without limitation, any action brought by a third party for breach of that third party's intellectual property rights.

## 10. OWNERSHIP OF EQUIPMENT & CONFIDENTIALITY

**10.1** EMCT acknowledges that all Equipment is the property of the Customer.

**10.2** EMCT acknowledges the confidential nature of, and the Customer's intellectual and industrial property rights in, the Equipment.

**10.3** Subject to being able to make disclosures to employees and sub-contractors for the purpose of enabling the performance of the Services and subject to Clauses 8.3 and 9 of this agreement, EMCT shall not without the Customer's prior consent in writing, copy or cause to be copied or disclose any details of the Equipment to a third party.

**10.4** EMCT's obligations under this clause shall survive the termination of this agreement.

## 11. WARRANTIES AND LIMITATION OF LIABILITY

**11.1** Where any Act of Parliament implies in this agreement any term, condition or warranty, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be limited at the option of EMCT, to any one or more of the following:

**11.1.1** the supplying of the Services again; or

**11.1.2** the payment of the cost of having the Services supplied again.

**11.2** The Customer expressly acknowledges that, to the extent that it is lawful to do so and subject to Clause 10.1, all terms, condition, warranties, undertakings, inducements or representation whether express, implied, statutory or otherwise relating in any way to the Services, the report or to this agreement, are excluded. Without limiting the generality of the preceding sentence, EMCT shall not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of any failure or omission on the part of EMCT to comply with its obligations under this agreement.

**11.3** This agreement contains the entire agreement of the parties with respect to the Services and the Customer warrants that it has not relied on any representation made by EMCT or implied from any descriptions or illustrations or specification contained in any document including any catalogues or publicity material produced by EMCT which has not been stated expressly in this agreement.

## 12. INDEMNITY

12.1 The Customer shall indemnify EMCT, its officers, employees, subcontractors and agents during the term of this agreement and thereafter from and against all losses, expenses, claims, proceedings, costs and damages that may be suffered by all or any of them and which are caused by or arise from the use or otherwise of the Equipment.

12.2 The Customer shall also indemnify EMCT, its officers, employees, subcontractors and agents during the term of this agreement and thereafter from and against any action brought by any third party in relation to all losses, expenses, claims, proceedings, costs and damages that may be suffered by any third party and which are caused by or arise from the use or otherwise of the Equipment or the report, including without limitation any breach by the Customer of the conditions contained in Clause 8.4.

12.3 The Customer shall indemnify EMCT against liability for the death of, or injury to, any person employed by the Customer, its officers, employees, agents or subcontractors on work under this Contract whilst on the premises of EMCT.

12.4 Before commencing work under the Contract, the Customer shall fully insure or register with the appropriate statutory authority for the death of, or injury to persons employed by the Customer, including liability by statute and common law. The insurance shall be maintained until all work under the Contract is completed. The Customer shall ensure each subcontractor, if any, is insured against the subcontractor's corresponding liabilities.

## 13. FORCE MAJEURE

13.1 In the event that EMCT shall be wholly or partially unable to carry out its obligations under this agreement by reason of causes beyond its reasonable control ("Force Majeure"), then EMCT will not be liable for any delay or failure to perform its obligations and will be excused from performing its obligations during the continuance of any such disability so caused.

13.2 EMCT shall notify the Customer as soon as practicable of any anticipated delay due to Force Majeure.

13.3 If a delay due to Force Majeure exceeds 90 days, EMCT may terminate this agreement immediately on providing notice to the Customer. If EMCT gives such notice to the Customer :

13.3.1 EMCT shall refund monies previously paid by the Customer under this agreement for which no Services have been provided; or

13.3.2 the Customer shall pay EMCT a reasonable sum in relation to Services rendered or costs and expenses incurred prior to termination.

## 14. TERMINATION

14.1 Without limiting the generality of any other clause in this agreement, either Party may terminate this agreement by notice in writing if:

14.1.1 the other Party commits a material breach of any of the terms of this agreement and does not rectify this breach within fourteen (14) days of receiving written notification of the said breach; or

14.1.2 it gives fourteen (14) days prior written notice to the other Party of its intention to terminate this agreement.

14.2 If notice is given to the Customer pursuant to Clause 14.1, EMCT may, in addition to terminating the agreement, retain any monies paid, charge a reasonable sum for work performed in respect of which work no sum has been previously charged, be regarded as discharged from any further obligations under this agreement, and pursue any additional or alternative remedies provided by law.

## 15. NOTICES

15.1 All notices, consents or other communications required or permitted to be given under this agreement by any party to another shall be in writing addressed to the address of the intended recipient shown in this clause or to such other address as has been most recently notified by the intended recipient or the party giving the notice. In the case of the EMCT, Technical Director, EMCT TECHNOLOGIES PTY LTD, 176 Harrick Rd, Keilor Park, Victoria, 3042, Facsimile (03) 93317455. In the case of the Customer, to the address of the person who signed the agreement.

## 16. SUB-CONTRACTS

16.1 The Customer acknowledges that EMCT may sub-contract the performance of this agreement or any part of this agreement. EMCT will inform the Customer of the details of the sub-contractor.

## 17. WAIVER

17.1 No waiver by EMCT of any of its rights under this agreement will prejudice its rights in respect of any subsequent breach of the agreement by the Customer. Any failure by EMCT to enforce any of the provisions of this agreement, or any forbearance, delay or indulgence granted by EMCT to the Customer, will not be construed as a waiver of its rights pursuant to the agreement.

## 18. SEVERABILITY

18.1 In the event of any provision or provisions of this agreement being invalid, unenforceable or illegal for any reason, the agreement shall remain otherwise in full force apart from the said provision or provisions which will be deemed deleted.

## 19. GOVERNING LAW

19.1 This agreement will be governed by and construed according to the law of the State of Victoria, Australia.